



DEPARTMENT OF  
HEALTH AND MENTAL HYGIENE



## INVITATION FOR BIDS (IFB)

SOLICITATION NO. DHMH OPASS – 14-13752

**Issue Date: June 5, 2014**

**PEER REVIEW SERVICES FOR THE MARYLAND BOARD OF PHYSICIANS**

### NOTICE

A Prospective Bidder that has received this document from the Department of Health and Mental Hygiene's website or <https://emaryland.buyspeed.com/bsol/>, or that has received this document from a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this IFB, should immediately contact the Procurement Officer and provide the Prospective Bidder's name and mailing address so that addenda to the IFB or other communications can be sent to the Prospective Bidder.

**Minority Business Enterprises Are Encouraged to Respond to this Solicitation.**

**STATE OF MARYLAND  
NOTICE TO VENDORS**

In order to help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this Contract, please email or fax this completed form to the attention of the Procurement Officer (see the Key Information Sheet below for contact information).

**Title: Peer Review Services for the Md. Board Of Physicians  
Solicitation No: DHMH OPASS 14-13752**

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not something we ordinarily provide.
- We are inexperienced in the work/commodities required.
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- The scope of work is beyond our present capacity.
- Doing business with the State of Maryland is simply too complicated. (Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the Bid/Proposal is insufficient.
- Start-up time is insufficient.
- Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- Bid/Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- MBE or VSBE requirements. (Explain in REMARKS section.)
- Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- Payment schedule too slow.
- Other: \_\_\_\_\_

2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

\_\_\_\_\_  
\_\_\_\_\_

Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
IFB KEY INFORMATION SUMMARY SHEET**

**Invitation for Bids:** Peer Review Services for the Md. Board of Physicians

**Solicitation Number:** DHMH OPASS – 14-13752

**IFB Issue Date:** TBD

**IFB Issuing Office:** Maryland Department of Health and Mental Hygiene  
Maryland Board of Physicians

**Procurement Officer:** Michael Howard  
201 W. Preston Street, 4<sup>th</sup>. Floor  
Baltimore., Md. 21201  
Phone (410) 767-0974 Fax: (410) 333-5958  
e-mail: Michael.Howard@maryland.gov

**Contract Officer:** Afua Tisdale, Contract Officer  
201 W. Preston Street  
Baltimore, Maryland 21201  
Phone (410) 767-5083  
Afua.Tisdale@maryland.gov

**Contract Monitor:** Gary Lauffer  
4201 Patterson Ave., 4<sup>th</sup> Floor  
Baltimore, Md. 21215  
Phone: (410) 764-5032 Fax (410) 358-1298  
Gary.Lauffer@maryland.gov

**Bids are to be sent to:** Maryland Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street  
Baltimore, Md. 21201  
Attention: Afua Tisdale  
Contract Officer

**Pre-Bid Conference:** Wednesday, June 18, 2014 10:00 a.m. Local Time  
4201 Patterson Avenue, NW, Room 100 Baltimore, MD  
21215

**Closing Date and Time:** July 7, 2014 at 2:00 p.m. Local Time

**Public Bid Opening:** July 8, 2014 at 2:00 p.m.  
201 West Preston Street, Baltimore, MD 21201  
Room 100

**MBE Subcontracting Goal:** 0 %

**VSBE Subcontracting Goal:** 0 %

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## SECTION 1 - GENERAL INFORMATION

### **1.1 Summary Statement**

- 1.1.1 The Maryland Department of Health and Mental Hygiene (DHMH or the Department), Maryland Board of Physicians is issuing this Invitation for Bids (IFB) to provide the services of physician Peer Reviewers certified by the American Board of Medical Specialities (ABMS) or the American Osteopathic Association (AOA) in various specialties, and the services of physician assistants and allied health practitioners certified by their respective Boards, with specific experience, to render an expert opinion as to whether the care rendered by a physician, physician assistant, or allied health practitioner under review did not meet the standards of quality care and/or whether the physician, physician assistant, or allied health practitioner kept adequate medical records. The Board may also ask reviewers to provide an opinion about any other allegation that may be grounds for discipline under the Maryland Medical Practice Act as cited in § 14-404 of the Health Occupations Article, Annotated Code of Maryland. This will allow the Board to carry out its mission of public protection.
- 1.1.2 It is the State's intention to obtain services, as specified in this IFB, from a Contract between the selected Bidder and the State. The anticipated duration of services to be provided under this Contract is three (3) years, with two 1-year renewal optional years.
- 1.1.3 The Department intends to make a single award as a result of this IFB.
- 1.1.4 Bidders, either directly or through their subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Bidder (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work. The Board reserves the right to reject any particular bid based on price considerations and budget constraints and to perform the services itself or procure them through another method.

### **1.2 Abbreviations and Definitions**

For purposes of this IFB, the following abbreviations or terms have the meanings indicated below:

- a. **“Addendum Reports”** – Additional report(s) rendered during a consultation by an individual Peer Reviewer after consideration of additional records of the same patient or patients whose care was described in the original Peer Review report. An addendum ordinarily would be limited to the issue of whether the additional records would result in a change of opinion on the part of the Peer Reviewer.
- b. **Bid** – A statement of price offered by a Bidder in response to an IFB.
- c. **Bidder** – An entity that submits a Bid in response to this IFB.
- d. **Board** – Maryland Board of Physicians

- e. **Business Day(s)** – The official Working Days of the week to include Monday through Friday. Official Working Days exclude State Holidays (see definition of “Normal State Business Hours” below).
- f. **Case** - An instance in which the Board refers to the Contractor the responsibility to evaluate the care provided by a physician and/or physician assistant or to evaluate any other potential violations of the Maryland Medical Practice Act.
- g. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us).
- h. **Completed Expert Review** - One Peer Review report, deemed acceptable to the Board, which addresses potential violations that do not require two peer reviewers, for the case referred, to include all the elements required by the Contract and by the Board’s focus of review.
- i. **Completed Peer Review** - Two Peer Review reports, deemed acceptable to the Board, which addresses potential violations that do not just require one peer review, for the case referred, each report to include all the elements required by the Contract and by the Board’s focus of review..
- j. **Consultation** - Conference or a series of conferences at which a Peer Reviewer gives professional opinions to the attorney assigned by the Board or the Peer Reviewer prepares for testimony with the attorney (administrative prosecutor from the Office of the Attorney General) assigned by the Board. The total of all such conferences attended by one Peer Reviewer in one case is a single instance of consultation. Consultation also includes the preparation of any necessary addendum report.
- k. **Contract** – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment A**.
- l. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
- m. **Contract Monitor (CM)** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope.
- n. **Contract Officer (CO)** – The Office of Procurement and Support Services (OPASS) designated individual assigned to facilitate the procurement process. The Procurement Officer may designate the Contract Officer to conduct components of the procurement on behalf of the Procurement Officer.
- o. **Contractor** – The selected Bidder that is awarded a Contract by the State.
- p. **Date of referral** - Date of receipt of the Expert/Peer Review materials by the Contractor.
- q. **Days** – Calendar days unless otherwise indicated.

- r. **Department or DHMH** – Maryland Department of Health and Mental Hygiene.
- s. **eMM** – eMaryland Marketplace (see IFB Section 1.8).
- t. **Expert Review** – A single review conducted by a qualified, licensed physician or physician assistant with specific experience, to provide expert opinion on allegations for grounds other than 22 (standard of care) or 40 (adequacy of medical records) of the Maryland Medical Practice Act.
- u. **Go-Live Date** – The date when the Contractor must begin providing all services required by this solicitation. See Section 1.4.
- v. **Invitation for Bids (IFB)** – This Invitation for Bids solicitation issued by the Maryland Department of Health and Mental Hygiene, Md. Board of Physicians, Solicitation Number OPASS- 14-13752, dated June 5, 2014, including any addenda.
- w. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- x. **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- y. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.
- z. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Department Contract Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- z. **Peer Review**– A review conducted by a qualified, licensed physician (for cases involving physicians) or physician assistant (for cases involving physician assistants) with specific experience, to provide expert opinion as to whether the care rendered by a medical practitioner under review met the standards of quality care and/or violated any other provisions of the Maryland Medical Practice Act.
- aa. **Peer Reviewer(s)** – A qualified, licensed physician (for cases involving physicians) or physician assistant (for cases involving physician assistants) with specific experience, to provide expert opinion as to whether the care rendered by a medical practitioner under review met the standards of quality care and/or violated any other provisions of the Maryland Medical Practice Act.**bb. Procurement Coordinator** – The State representative designated by the Procurement Officer to perform certain duties related to this solicitation which are expressly set forth herein.

- cc. Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative who can authorize changes to the Contract. DHMH may change the Procurement Officer at any time by written notice to the Contractor.
- dd. Referral** - Board’s formal assignment of a case to the Contractor for Expert/Peer Review services. Referral begins on the date the Contractor receives the case from the Board. A physician referral for grounds (22) (standard of care) and (40) (adequate medical records) requires two Peer Reviewers and a physician assistant review requires one Peer Reviewer.
- ee. State** – The State of Maryland.
- ff. Testimony** - Statements under oath of the Expert/Peer Reviewer as an expert witness as to the standards of quality care applicable to care and treatment provided by the physician under review, the adequacy of the medical records reviewed and/or violations of any other provisions of the Maryland Medical Practice Act.
- gg. Total Bid Price** - The Bidder’s total price for services in response to this solicitation, included in the Bid in Attachment F – Bid Form, and used in determining the recommended awardee (see IFB Section 1.15).
- hh. Veteran-owned Small Business Enterprise (VSBE)** – a business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- ii. Working Day(s)** – Same as “Business Day(s).”

### **1.3 Contract Type**

The Contract resulting from this solicitation shall be an Indefinite Quantity Contract with Fixed Unit Prices as defined in COMAR 21.06.03.06.

### **1.4 Contract Duration**

- 1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required (“Contract Commencement”).
- 1.4.2 The period of time from the date of Contract Commencement through the Go-Live Date (see Section 1.2 definition and Section 1.4.3) will be the Contract “Start-up Period.” During the Start-up Period the Contractor shall perform start-up activities such as are necessary to enable the Contractor to begin the successful performance of Contract activities as of the Go Live Date. No compensation will be paid to the Contractor for any activities it performs during the Start-up Period.
- 1.4.3 As of the Go-Live Date, as contained in a Notice to Proceed (see Section 1.2 definition), the Contractor shall perform all activities required by the Contract, including the requirements

of this solicitation, for the compensation described in its Bid. This Contract is a 36 month Contract from the Go-Live Date with two, one-year renewable option periods.

- 1.4.4 The duration of the Contract will be for the period of time from Contract Commencement to the Go-Live Date (the Start-Up Period as described in Section 1.4.2) plus three (3) years from the Go-Live Date for the provision of all services required by the Contract and the requirements of this solicitation.
- 1.4.5 The Contractor's obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

## **1.5 Procurement Officer**

- 1.5.1 The sole point of contact in the State for purposes of this solicitation prior to the award of any Contract is the Procurement Officer at the address listed below:

Michael Howard  
Maryland Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street, Room 416B, Baltimore, Maryland 21201  
Phone Number: (410) 767-0974 Fax Number: (410) 333-5958  
E-mail: [michael.howard@maryland.gov](mailto:michael.howard@maryland.gov)

The Department may change the Procurement Officer at any time by written notice.

- 1.5.2 The Procurement Officer designates the following individual as the Procurement Coordinator, who is authorized to act on behalf of the Procurement Officer only as expressly set forth in this solicitation:

Regina Rouchard  
Maryland Board of Physicians  
4201 Patterson Ave., 4<sup>th</sup> Floor  
Baltimore, Md. 21215  
Phone Number: (410) 764-4706  
Fax Number: (410) 358-1298  
E-mail: [Regina.Rouchard@maryland.gov](mailto:Regina.Rouchard@maryland.gov)

The Department may change the Procurement Coordinator at any time by written notice.

- 1.5.3 The Procurement Officer designates the following individual as the Contract Officer, who is authorized to act on behalf of the Procurement Officer:

Afua Tisdale  
Maryland Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street  
Baltimore, MD 21201  
Phone Number: (410) 767- 5083

Fax Number: (410) 333-5958  
E-mail: [Afua.Tisdale@maryland.gov](mailto:Afua.Tisdale@maryland.gov)

The Department may change the Contract Officer at any time by written notice.

## **1.6 Contract Monitor**

The Contract Monitor is:

Gary Lauffer  
Maryland Department of Health and Mental Hygiene  
Maryland Board of Physicians  
4201 Patterson Avenue, 4<sup>th</sup>. Floor  
Baltimore, Maryland 21215  
Phone Number: ( 410) 764-5032  
Fax Number: ( 410) 358- 1298  
E-mail: [gary.lauffer@maryland.gov](mailto:gary.lauffer@maryland.gov)

The Department may change the Contract Monitor at any time by written notice.

## **1.7 Pre-Bid Conference**

A Pre-Bid Conference (the Conference) will be held on Wednesday, June 18, 2014 beginning at 10:00 a.m. Local Time, at Md. Board of Physicians, 4201 Patterson Ave., Room 100, Baltimore, Md. 21215. All prospective Bidders are encouraged to attend in order to facilitate better preparation of their Bids.

The Conference will be summarized. As promptly as is feasible subsequent to the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Bidders known to have received a copy of this IFB. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace. See IFB Section 1.8.

In order to assure adequate seating and other accommodations at the Conference, please e-mail, mail, or fax to (41) 358-1298 the Pre-Bid Conference Response Form to the attention of the Procurement Coordinator no later than 4:00 p.m. Local Time on June 13, 2014. The Pre-Bid Conference Response Form is included as **Attachment E** to this IFB. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Coordinator no later than June 13, 2014. The Department will make a reasonable effort to provide such special accommodation.

## **1.8 eMarylandMarketplace**

Each Bidder is requested to indicate its eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted at the time of its Bid submission to this IFB.

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DHMH website (<http://www.dhmh.maryland.gov/procumnt/SitePages/procopps.aspx>) and possibly other means for transmitting the IFB and associated materials, the solicitation and summary of the Pre-Bid

Conference, Bidder questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM.

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsol/login.jsp>, click on "Register" to begin the process, and then follow the prompts.

## **1.9 Questions**

Written questions from prospective Bidders will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the following e-mail address:

[dhmh.solicitations@maryland.gov](mailto:dhmh.solicitations@maryland.gov). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Bidders attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer (**see above email address**) in a timely manner prior to the Bid due date. Questions are requested to be submitted at least five (5) days prior to the Bid due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Bid due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the IFB in sufficient time for the answer to be taken into consideration in the Bid.

## **1.10 Procurement Method**

This Contract will be awarded in accordance with the Competitive Sealed Bidding method under COMAR 21.05.02.

## **1.11 Bids Due (Closing) Date and Time**

Bids, in the number and form set forth in Section 4.4 "Required Bid Submissions," must be received by the Contract Officer at the address listed on the Key Information Summary Sheet, no later than **2:00 p.m.** Local Time on **July 7, 2014** in order to be considered.

Requests for extension of this time or date will not be granted. Bidders mailing Bids should allow sufficient mail delivery time to ensure timely receipt by the Contract Monitor. Except as provided in COMAR 21.05.02.10, Bids received after the due date and time listed in this section will not be considered.

Bids may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set for the opening.

**Bids may not be submitted by e-mail or facsimile.**

Vendors not responding to this solicitation are requested to submit the "Notice to Vendors" form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements, etc.). This form is located in the IFB immediately following the Title Page (page ii).

### **1.12 Multiple or Alternate Bids**

Multiple and/or alternate Bids will not be accepted.

### **1.13 Receipt, Opening and Recording of Bids**

- 1.13.1 Receipt. Upon receipt, each Bid and any timely modification(s) to a Bid shall be stored in a secure place until the time and date set for bid opening. Before Bid opening, the State may not disclose the identity of any Bidder.
- 1.13.2 Opening and Recording. Bids and timely modifications to Bids shall be opened publicly, at the time, date and place designated in the IFB. The name of each Bidder, the total Bid price, and such other information as is deemed appropriate shall be read aloud or otherwise made available.
- 1.13.3 The Bid Opening shall be July 8, 2014 at 2:00 at Office of Procurement and Support Services, 201 W. Preston Street, Baltimore, Md. 21201.

### **1.14 Confidentiality of Bids**

The Bids shall be tabulated or a Bid abstract made. The opened Bids shall be available for public inspection at a reasonable time after Bid opening, but in any case before contract award, except to the extent the Bidder designates trade secrets or other proprietary data to be confidential as set forth in this solicitation. Material so designated as confidential shall accompany the Bid and shall be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid, including the Total Bid Price.

For requests for information made under the Public Information Act (PIA), the Procurement Officer shall examine the Bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by the Office of the Attorney General.

### **1.15 Award Basis**

The Contract shall be awarded to the responsible Bidder submitting a responsive Bid with the most favorable Total Bid Price (as referenced in COMAR 21.05.02.13) for providing the goods and services as specified in this IFB. The most favorable Total Bid Price will be the lowest price total on **Attachment F** - Bid Form.

### **1.16 Tie Bids**

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

### **1.17 Duration of Bid**

Bids submitted in response to this IFB are irrevocable for 120 days following the closing date of the Bids. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

### **1.18 Revisions to the IFB**

If it becomes necessary to revise this IFB before the due date for Bids, the Department shall endeavor to provide addenda to all prospective Bidders that were sent this IFB or which are otherwise known by the Procurement Officer to have obtained this IFB. In addition, addenda to the IFB will be posted on the DHMH Current Procurements web page and through eMM. It remains the responsibility of all prospective Bidders to check all applicable websites for any addenda issued prior to the submission of Bids.

Acknowledgment of the receipt of all addenda to this IFB issued before the Bid due date shall be included in the Transmittal Letter accompanying the Bidder's Bid. Failure to acknowledge receipt of an addendum does not relieve the Bidder from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Bid to be rejected as being non-responsive to the requirements of the IFB.

### **1.19 Cancellations**

The State reserves the right to cancel this IFB, or accept or reject any and all Bids, in whole or in part, received in response to this IFB.

### **1.20 Incurred Expenses**

The State will not be responsible for any costs incurred by any Bidder in preparing and submitting a Bid or in performing any other activities related to this solicitation.

### **1.21 Protest/Disputes**

Any protest or dispute related, respectively, to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

### **1.22 Bidder Responsibilities**

The selected Bidder shall be responsible for rendering services for which it has been selected as required by this IFB. All subcontractors shall be identified and a complete description of their role relative to the Bid shall be included in the Bidder's Bid. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this IFB (see Section 1.33 "Minority Business Enterprise Goals" and Section 1.41 "Veteran-Owned Small Business Enterprise Goals.").

If a Bidder that seeks to perform or provide the services required by this IFB is the subsidiary of another entity, all information submitted by the Bidder, such as but not limited to, references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Bidder, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder's Bid shall contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

### **1.23 Substitution of Personnel**

If the solicitation requires that a particular individual or personnel be designated by the Bidder to work on the Contract, any substitution of personnel after the Contract has commenced must be approved in writing by the Contract Monitor prior to the substitution. If the Contractor substitutes personnel without the prior written approval of the Contract Monitor, the Contract may be terminated for default which shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

### **1.24 Mandatory Contractual Terms**

By submitting a Bid in response to this IFB, a Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this IFB and the Contract, attached herein as **Attachment A**. Any exceptions to this IFB or the Contract must be raised prior to Bid submission. **Changes to the solicitation, including the Bid Form or Contract, made by the Bidder may result in Bid rejection.**

### **1.25 Bid/Proposal Affidavit**

A Bid submitted by a Bidder must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as **Attachment B** of this IFB.

### **1.26 Contract Affidavit**

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a Contract Affidavit. A copy of this Affidavit is included as **Attachment C** of this IFB. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. This Contract Affidavit will also be required to be completed by the Contractor prior to any Contract renewals, including the exercise of any options or modifications that may extend the Contract term.

### **1.27 Compliance with Laws/Arrearages**

By submitting a Bid in response to this IFB, the Bidder, if selected for award, agrees that it will comply with all Federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Bidder represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract if selected for Contract award.

### **1.28 Verification of Registration and Tax Payment**

Before a business entity can do business in the State it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <http://www.dat.state.md.us/sdatweb/services.html> .

It is strongly recommended that any potential Bidder complete registration prior to the due date for receipt of Bids. A Bidder's failure to complete registration with SDAT may disqualify an otherwise successful Bidder from final consideration and recommendation for Contract award.

### **1.29 False Statements**

Bidders are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

1.29.1 In connection with a procurement contract a person may not willfully:

- (a) Falsify, conceal, or suppress a material fact by any scheme or device;
- (b) Make a false or fraudulent statement or representation of a material fact; or
- (c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

1.29.2 A person may not aid or conspire with another person to commit an act under subsection (1) of this section.

1.29.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

### **1.30 Payments by Electronic Funds Transfer**

By submitting a response to this solicitation, the Contractor agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$100,000. The selected Bidder/Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

[http://comptroller.marylandtaxes.com/Government\\_Services/State\\_Accounting\\_Information/Static\\_Files/APM/gadx-10.pdf](http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gadx-10.pdf)

### **1.31 Prompt Payment Policy**

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor must comply with the prompt payment requirements outlined in the Contract, Section 31 "Prompt Payment" (see **Attachment A**). Additional information is available on GOMA's website at: [http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs\\_000.pdf](http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs_000.pdf).

### **1.32 Electronic Procurements Authorized**

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, DHMH may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Contractor to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bs/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
  1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
    - (a) the solicitation (e.g., the IFB/RFP);
    - (b) any amendments;
    - (c) pre-Bid/Proposal conference documents;
    - (d) questions and responses;
    - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
    - (f) notices of award selection or non-selection; and
    - (g) the Procurement Officer's decision on any Bid protest or Contract claim.
  2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:

- (a) ask questions regarding the solicitation;
  - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
  - (c) submit a "No Bid/Proposal Response" to the solicitation.
3. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
- 1. submission of initial Bids or Proposals;
  - 2. filing of Bid Protests;
  - 3. filing of Contract Claims;
  - 4. submission of documents determined by DHMH to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
  - 5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder/Offeror be provided in writing or hard copy.
- F. Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

### **1.33 Minority Business Enterprise Goals**

There is no MBE subcontractor participation goal for this procurement.

### **1.34 Living Wage Requirements**

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Md. Code Ann., State Finance and Procurement Article, Title 18. Additional information regarding the State's living wage requirement is contained in **Attachment G**. Bidders/Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**) with their Bid/Proposal. If a Bidder/Offeror fails to complete and submit the required documentation, the State may determine a Bidder/Offeror to be not responsible under State law.

Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.

The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Bidder/Offeror must identify in its Bid/Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.

- If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 1 Contract.

Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

**NOTE: Whereas the Living Wage may change annually, the Contract price may not be changed because of a Living Wage change.**

### **1.35 Federal Funding Acknowledgement**

This Contract does not contain Federal funds.

### **1.36 Conflict of Interest Affidavit and Disclosure**

Bidders/Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment I**) and submit it with their Bid/Proposal. All Bidders/Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor's personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to **Attachment I** Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

### **1.37 Non-Disclosure Agreement**

All Bidders/Offerors are advised that this solicitation and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment J**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award; however, to expedite processing, it is suggested that this document be completed and submitted with the Bid/Proposal.

### **1.38 HIPAA - Business Associate Agreement**

Based on the determination by DHMH that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in HIPAA, the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.501 and set forth in **Attachment K**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award; however, to expedite processing, it is suggested that this document be completed and submitted with the Bid/Proposal. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Bidder/Offeror with the next lowest Bid or next highest overall-ranked Proposal.

### **1.39 Nonvisual Access**

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

### **1.40 Mercury and Products That Contain Mercury**

This solicitation does not include the procurement of products known to likely include mercury as a component.

### **1.41 Veteran-Owned Small Business Enterprise Goals**

There is no Veteran-Owned Small Business Enterprise (VSBE) subcontractor participation goal for this procurement.

### **1.42 Location of the Performance of Services Disclosure**

The Bidder/Offeror is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as **Attachment N**. The Disclosure must be provided with the Bid/Proposal.

### **1.43 Department of Human Resources (DHR) Hiring Agreement**

All Bidders/Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor will be required to complete a DHR Hiring Agreement. A copy of this Affidavit is included as **Attachment O**. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award.

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## **SECTION 2 – MINIMUM QUALIFICATIONS**

### **2.1 Bidder Minimum Qualifications**

The Bidder must provide proof with its Bid that the following Minimum Qualifications have been met:

- 2.1.1 The Bidder shall have five or more years of experience coordinating Peer Review services for a governmental agency, including, but not limited to, finding appropriate reviewers who meet minimum qualifications for all possible medical specialties, and ensuring satisfactory completion of reports within specified timeframes. As proof of meeting this Minimum Qualification, the Bidder shall provide with its Bid at least three (3) references able to attest to the Bidder's experience in coordinating Peer Review services. A Bidder Affidavit is required (see Attachment Q).

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## **SECTION 3 – SCOPE OF WORK**

### **3.1 Background and Purpose**

The State is issuing this solicitation for the purposes of hiring physician/physician assistant expert and Peer Reviewers to determine whether the practitioners under investigation (physicians, physician assistants, and certain allied health practitioners) violated any provisions of the Maryland Medical Practice Act as cited in § 14-404 of the Health Occupations Article, Annotated Code of Maryland.

The State Board of Physicians (Board), a unit within the Department of Health and Mental Hygiene, is authorized to discipline physicians, physician assistants, and allied health professionals under its jurisdiction when there is a preponderance of evidence of a failure to meet appropriate standards of quality medical and surgical care, or a failure to keep adequate medical records. Please see Attachment T for an illustration of the Maryland Board of Physicians Complaint Process. The Board will also ask reviewers to provide an opinion about these cases and about any other allegation that may be grounds for discipline under the Maryland Medical Practice Act. To do this, the Board needs the services of like specialty Peer Reviewers, certified by the American Board of Medical Specialties (ABMS), the American Osteopathic Association (AOA), or the professional certification boards for various allied health practitioners in various specialties and the services of physician assistants with specific clinical experience, to render an expert opinion as to whether the care rendered by the physician, physician assistant and/or allied health professional under review met the minimum standards of quality care and/or whether the practitioner kept adequate medical records. See Attachment P for historical information on medical specialties used for past Peer Reviews. These reviewers may also be asked to render opinions as to whether any other provisions of the Maryland Medical Practice Act have been violated. These Peer Reviewers may also be required to consult with the Board's administrative prosecutors and testify as expert witnesses at a hearing that may ensue from their expert opinion.

The Medical Practice Act (Act) requires the Board to enter into a written Contract with an entity or individual for covered Peer Review. This IFB is for a rate per deliverable as specified in Attachment F. There is also additional payment for Board-designated expedited reviews, also as specified in Attachment F.

The purpose of this solicitation is to contract with one vendor to conduct physician, physician assistant, and allied health practitioner Peer Reviews, and to provide expert opinions, consultation, and witness testimony, in order to assist the Board in investigating and taking, where necessary, appropriate disciplinary action against licensees who are the subjects of allegations under the Maryland Medical Practice Act.

The Board intends to contract with one vendor that will allow the Board to carry out its mission of public protection. The Contractor will be required to write physician, physician assistant and/or allied health practitioner Peer Review reports that are conclusive, thorough, reliable, timely, and produced by qualified reviewers who are willing and able to consult with administrative prosecutors and render expert testimony upon which the Board and its administrative prosecutors may rely in the prosecution of a complaint.

## 3.2 Scope of Work - Requirements

### 3.2.1 General Requirements

#### (a) Contract Requirements

The Contractor will engage qualified physicians, qualified physician assistants, and qualified allied health professionals. Qualified physicians, physician assistants, and allied health professionals are individuals who are licensed and who have a minimum of five years clinical experience. Contractor will sign an affidavit to this effect. See Attachment Q. All physicians, physician assistants, and allied health practitioners who conduct peer/expert review referred by the Board, will review the materials provided by the Board pertaining to the quality of medical care provided by a practitioner under investigation and/or the adequacy of the medical records. Additional allegations under the Maryland Medical Practice Act may also be referred for expert review. Each physician and allied health care practitioner case will normally require two Peer Reviewers, though there may be instances in which three are required. Each physician assistant case will normally require one reviewer, though there may be instances in which two are required.

In each case, the Contractor shall assure that each Peer Reviewer will submit a single written report stating if the practitioner failed to meet the minimum standards of care and cite the practitioners' failures regarding allegations under the Medical Practice Act. In some of these cases, the same reviewer will also be required to consult with an administrative prosecutor from the Office of the Attorney General in preparation for possible testimony at a confidential administrative proceeding. In some of these same cases, the same Peer Reviewer will be required to testify as an expert witness to support his or her opinion at this confidential administrative hearing.

The Board reserves the right to limit the number of reports from any individual Peer Reviewer or to require the Contractor to use another reviewer.

#### (f) Projected Need For Each Component

The Board expects to employ the Contractor or to conduct peer and/or expert reviews in approximately 50 cases per year, comprising approximately 100 individual Peer Review reports and a much lower number of instances where either consultation or testimony is required, during the course of this three-year contract. The Board expects that consultation will be required in about 40% of the cases referred, and that testimony will be required in about 5% of all cases referred. The Board cannot guarantee, however, that the requisite number of cases will arise or will be referred to a contractor, or that consultation or testimony will be required in any specific number or percentage of cases. In addition, fiscal contingencies may arise which limit the number of cases referred. Nevertheless, the Board will reimburse a contractor only for Peer and/or Expert Reviews actually referred and reports delivered, and for instances of consultation or testimony actually accomplished. Please refer to **Attachment P** for historical data by specialty and reviews involving single and multiple patients.

If the Board refers a case, up to and including the last day of this Contract, the Contractor's responsibility to produce any of the required components continues, and the Board's responsibilities of payment continue subject to all other conditions of the Contract.

### **3.2.2 Peer Review Reports Required from Contractor**

#### **(a) Preparation of the Reports; Number of Reports Per Case**

The Contractor shall assign two Peer Reviewers and/or one expert reviewer at the instruction of the Board and provide a written report from each of the reviewers. (For the expert witness requests, only one specialist and corresponding report are required. For a physician's assistant review, only one Peer Reviewer and corresponding report will be required). The Contractor shall assign appropriate reviewers and notify the Department of the assignment in writing within 10 days after receiving the referral, The Contractor's assignment of reviewers is subject to the approval of the Department. If the Contractor is unable to designate appropriate Peer Reviewers within 10 days, the Contractor shall notify the Department's Contract Monitor in writing. **The Peer/Expert Reviewers may not consult each other during their reviews or in preparing their reports and may not be part of the same group practice.** The Peer/Expert Reviewers may not have any personal or professional relationship with the practitioner under investigation. Within 10 days after receipt of the Board's order, the Peer Reviewers shall consult directly with the Department's Contract Monitor if necessary to discuss the focus of the referral and whether any additional records or further investigation is needed or would be helpful in order for the reviewer(s) to form an informed opinion. The peer/expert reviewers must request clarification or additional records prior to submission of the completed report. Reports that state additional records or clarification is necessary will be rejected as will reports that do not render a requested opinion. If in the opinion of the Board a third Peer Review is necessary, the Contract Monitor will refer the case for a third report. The Board will pay the bid price for the actual services performed by third reviewer.

#### **(b) Review of Materials**

The Peer Reviewers shall review all of the relevant medical records and charts, the complaint, applicable investigative reports and depositions. The Peer Reviewers shall refer to the relevant material reviewed in the Completed Peer Review report. The materials submitted for review will either involve one patient record or multiple patient records.

#### **(c) Submission of a Formal Written Report; Requirements**

Peer and/or expert reviewers shall submit to the Board formal written reports for Peer Reviews involving a single patient or Peer Reviews involving multiple patients on selected electronic forms, hard copy examples of which are attached to this solicitation (**Attachments R through R2**). The Contractor will provide the electronic form on a disk (CD) to each reviewer. The reviewer will compose the Peer Review report directly on the electronic form, print out the completed report, sign the report, and return to the Contractor the hard copy report and the disk with the completed electronic form. The purpose of the electronic form is to assure that the reviewer in each report and in the discussion in regard to each patient:

- (1) demonstrates a knowledge of the background of the complaint and of the medical treatment at issue;

- (2) states the answer to the allegations under the Maryland Medical Practice Act;
- (3) states what standard of quality care is required in this instance;
- (4) states whether the care rendered by the physician or physician assistant under review met the standard of quality care;
- (5) states the basis for the reviewer's opinion why the standard of quality care was met or not met in each case;
- (6) states the basis for the reviewer's opinion regarding the allegation;
- (7) responds to the Board's questions and focus of review;
- (8) reaches a definitive and unambiguous conclusion on the quality of medical care provided and/or any other provision of the Maryland Medical Practice Act;
- (9) does not contain extraneous, irrelevant or personal comments; and
- (8) does not make any recommendations with respect to Board action.

The Board will reject peer and/or review reports that do not meet the requirements. Rejected reports will not be billable by the Contractor until the Board receives an acceptable report.

The use of the electronic form is subject to the discretion of the Department's Contract Monitor. The Contract Monitor may permit submission of the report by means other than the electronic form.

### 3.2.3 **Board Responsibilities**

#### (a) **In General**

The Board will assemble the complaint, the response, and any investigative materials and medical records which it initially believes to be pertinent, prior to referring the case to the Contractor. The Board will deliver these materials to the Contractor. Such delivery constitutes the date of the referral to the Contractor.

The Board will provide to its Contractor a peer and/or expert review record in which the case materials have been sequentially numbered and organized to facilitate a thorough and focused review and a detailed and complete report.

The Board will provide the name and email address of the Department's Contract Monitor and a phone number at which the Department's Contract Monitor can be reached during normal business hours. The Department's Contract Monitor shall be responsible for maintaining contact with each Peer Reviewer as needed. The Contract Monitor may delegate this responsibility.

#### (b) **Board Responsibilities Regarding Time; Extensions of Time for Peer Reviews due in 60 days**

In the event that an individual reviewer requires additional material not supplied along with the referral, the Department's Contract Monitor is responsible for providing the additional material promptly. The need for additional material will not affect the due date of the review, however, unless:

- (1) the Peer Reviewer contacted the Department's Contract Monitor and requested the additional material within 30 days after the case was referred from the Board to

the Contractor, and the additional material exists and can be obtained through reasonable additional efforts on the Board's part;

(2) the Board failed to provide the additional material, or failed to ascertain whether the additional material exists, within 20 calendar days after the Peer Reviewer contacted the Department's Contract Monitor and requested the additional material; and

(3) the Contractor notifies the Department's Contract Monitor in writing that the above conditions exist within 25 days after the Peer Reviewer contacted the Department's Contract Monitor and requested the additional material.

In the event that the above conditions occur, the Contractor will be granted an extension of up to 30 days for a delay which is attributable to these conditions.

(c) Payment Contingent on Timeliness

(1) In General

It is essential that the Board receive two Peer Review reports for each physician and allied health practitioner referral and one report for each physician assistant referral. With respect to the first two Peer Review reports requested in any referred case, the Contractor will deliver both Completed Peer Review reports within 60 days of the referral from the Board to the Contractor. The Board **MAY** grant an extension of up to 30 days for good cause shown, but only if the request was made before the 30<sup>th</sup> day after referral from the Board to the Contractor. No payment will be made for any referral with respect to which any peer and/or expert review report is submitted more than 60 days after the referral, unless such report is delivered timely in accordance with a previously granted extension.

(2) Time is of the essence in this Contract.

If at any point the Department's Contract Monitor withdraws a request for a peer and/or expert review pursuant to this Contract, the Contractor will submit all work performed up to that time and a pro-rated amount will be determined based upon the time the withdrawal was issued and the amount of work completed by the Contractor up to 50% of the Peer Review amount. This paragraph does not create a requirement that the Department's Contract Monitor issue any notice of withdrawal in order to enforce the requirement that payment will not be made unless Peer Reviews are delivered timely; nor is the absence of such a notice of withdrawal a waiver of that requirement.

(3) Withdrawal of Request for Peer Review

Unless the three conditions set out in Section 3.2.3 (b), (1, 2, 3) are applicable, the Board will withdraw the request for a peer and/or expert review if not completed and delivered within 60 days (or within the time granted by an extension). No funds attributable to that peer and/or expert review will be payable to the Contractor.

(4) Where a Second or Third Report May Be Necessary

a. The Board may determine that an additional peer and/or expert review report is necessary for a particular case, and may require a third Peer Review report in the case of a physician or allied health practitioner and a second report in the case of a physician assistant. No payment will be made for the third report (physician or allied health practitioner case) or a second report (physician assistant case) unless the Contractor delivers it within 60 days of the Department's Contract Monitor's request, or within the time set by any extension granted under the provisions of this paragraph.

b. The following timelines apply for requested third Peer Reviews in the case of a physician or allied health practitioner and a second report in the case of a physician assistant:

c. The Contractor must notify the Department's Contract Monitor of the name of the proposed third Peer Reviewer in the case of a physician or allied health practitioner and a second report in the case of a physician assistant within 10 calendar days of the date of the Department's Contract Monitor's request. The Department's Contract Monitor shall notify the Contractor within the next three working days if the proposed third reviewer in the case of a physician or allied health practitioner and a second report in the case of a physician assistant is acceptable. Any additional material requested by the third Peer Reviewer in the case of a physician or allied health practitioner and a second report in the case of a physician assistant shall be requested by the 30<sup>th</sup> day after the Department's Contract Monitor's request. Unless the third Peer Reviewer in the case of a physician or allied health practitioner and a second report in the case of a physician assistant has requested additional pertinent material by the 30<sup>th</sup> day after the Department's Contract Monitor's request, and the Board has not provided that material nor notified the third Peer Reviewer or a second report in the case of a physician assistant that the material is nonexistent by the 45<sup>th</sup> day after the Department's Contract Monitor's request, no extension may be granted. If, however, the material was timely requested and the Board has not by the 45<sup>th</sup> day either supplied the material or notified the peer and/or expert reviewer of its non-existence, the Board shall grant an extension, not to exceed 30 days. Unless such an extension has been granted, no payment will be made unless the additional peer and/or expert review report is delivered within 60 days of the date of the Department's Contract Monitor's request. If an extension has been granted, no payment will be made unless the third Peer Review report is delivered within the time set by the extension.

(d) Expedited Peer Reviews

If the Board determines that a case requires an expedited Peer Review, it will designate in advance in writing that the case requires an expedited peer and/or expert review, and will refer the case with the offer of payment for a completed review in 30 days. The Board will make the payment only if the Contractor returns two completed reports to the Board in 30 days in the case of a physician or allied health practitioner and one completed report in the case of a physician assistant. All parts of the process, including identification and approval of the peer and/or expert reviewers, must take place within the 30 day time period. The Board will screen the reviewers within 24 hours after the name is presented for screening.

If the Board takes longer than 24 hours to screen the reviewer, each day in addition to the required 24 hours will add one day to the due date.

No additional time will be allowed for reviewers who are screened, but not approved to do the review. For reviewers presented for screening on the last business day of a week, the 24 hours will be counted from the time the name is presented on the last business day of the week and the first business day of the next week.

Unless the Contract Monitor requests an expedited third review or a second review in the case of a physician assistant, if a third report (or a second report in the case of a physician assistant) is requested after the 30 day Peer Review reports are completed, the process will be in accord with Section C (4).

For cases which the Board has designated in advance in writing as requiring expedited reviews in accordance with Section D, the Board will pay the expedited rate of the contract.

#### **3.2.4 Consultation and Preparation of Testimony**

The Contractor shall assure that the peer and/or expert reviewer participates in any required preparation for testimony. This preparation will consist of consultation and possible preparation of expert witness testimony with the attorney assigned to prosecute the case by the Board. Consultation may include an Addendum Report. The peer and/or expert reviewer will not be required to travel to provide this consultation and preparation. It will ordinarily take place in the peer and/or expert reviewer's office and may, at the discretion of the attorney, be conducted entirely by phone. The determination of whether preparation or consultation is required is made by the attorney assigned by the Board. The Contractor will provide the current contact information for the peer and/or expert reviewer to the Board. The Contractor will intervene if the reviewer is unresponsive to the Board or its attorneys.

#### **3.2.5 Testimony and Other Required Presence at a Hearing**

The Contractor shall assure that, if a Peer Reviewer and/or expert reviewer is required to testify at an administrative hearing, the Peer Reviewer will testify fairly and knowledgeably about the case and must articulate clearly both the standard which he or she believes to be applicable and the reason why the care in question did or did not meet that standard and/or their opinion regarding the allegation and ground under the Medical Practice Act. Where required by the attorney handling the case, the peer and/or expert reviewer shall be present at a hearing for expert consultation. The determination of whether testimony or presence at a hearing is required is made by the attorney assigned by the Board.

#### **3.2.6 End of Contract Provision**

If the Board refers a case, up to and including the last day of this Contract, the Contractor's responsibility to produce any of the required components continues in effect, and the Board's responsibilities of payment continues subject to all other conditions of the Contract.

#### **3.2.7 Mandatory Payment to Peer Reviewers**

(a) Standard Reviews (Reviews due in 60 days)

The Contractor shall reimburse each peer and/or expert reviewer separate amounts for each of the following:

- (1) reviewing the case and completing that individual Peer Reviewer's report in a timely manner;
- (2) if required, consulting, in preparation of the Board's charging document and for possible testimony, with administrative prosecutors assigned by the Board; and
- (3) if required, testifying in any consequent administrative proceeding or being required to be present during the hearing for expert consultation.

(b) Expedited Reviews (Reviews due in 30 days)

In cases where the Board requires an expedited Peer Review, the Board will designate this requirement in advance and in writing.

(c) Other Administrative Methods

Other than as required by Section 3.2.7 (a) and (b), the Contractor may utilize any methods of administration it deems feasible and may produce the Peer and/or Expert Review report by any method that does not violate federal or state law or the provisions of this Contract. The final Peer and/or Expert Review reports, however, must be in the format specified and signed by each individual Peer and/or Expert Reviewer and must accurately reflect the reasoning and opinions of each Peer and/or Expert Reviewer.

### **3.2.8 Qualification of Peer and/or Expert Reviewers**

(a) General

For physician cases, the Peer Reviewers shall be Board-certified by the American Board of Medical Specialties or the American Osteopathic Association, must have five or more years' post-residency, clinical experience in the practice of medicine, and, to the extent practicable, be licensed in Maryland and engaged in the practice of medicine in Maryland. For allied health practitioner and physician assistant cases, the Peer Reviewer shall have five or more years' clinical experience in the appropriate discipline, and to the extent practicable, be licensed in Maryland and engaged in the practice of the discipline.

(b) By Specialty

Within 10 days, the Contractor shall designate peer and/or expert reviewers who will be of the same specialty as the physician, allied health practitioner or physician assistant under investigation if the care at issue is normally performed by a physician, allied health practitioner or a physician assistant of that specialty. However, the Contractor may designate a peer and/or expert reviewer of a different specialty, the practitioners of which often perform the same or similar type of procedures as that provided by the investigated physician and/or physician assistant or who often treat the same or similar medical problems as those for which the investigated physician, allied health practitioner and/or physician assistant provided treatment. The Department's Contract Monitor may in any particular case determine the specialty of the peer and/or expert reviewers.

(c) Subspecialties

For physician cases related to standard of care cases, if the Department's Contract Monitor designates a subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association, the Contractor shall make good faith efforts to produce two (2) Peer Reviewers of that subspecialty. If the Contractor cannot produce two (2) Peer Reviewers of that subspecialty the Contractor must produce Peer Reviewers of the specialty which encompasses that subspecialty.

(d) Maryland-Licensed Physicians and Physician Assistants

The Contractor shall make a reasonable effort to utilize as Peer Reviewers, physicians, allied health practitioners and physician assistants licensed to practice in Maryland. If, after a reasonable effort, the Contractor cannot designate Maryland-licensed physicians and/or physician assistant, the Contractor shall notify the Department's Contract Monitor within 10 days of the referral. The notification shall be in writing and shall narrate specific efforts to obtain Maryland-licensed reviewers. The notification shall also advise the Board if the Contractor has located a qualified reviewer licensed in a state other than Maryland. Upon receipt of such notification, the Department's Contract Monitor shall within 10 calendar days determine if these practitioners may be used.

(e) Screening Responsibilities of the Parties

For the reports due in 60 days, the Contractor is responsible for the initial screening of Peer and/or expert Reviewers for the appropriate qualifications as set out in Section 3.2.8 (a), (b), (c), and to assure that the Peer and/or expert Reviewers have no formal Board actions against them. The Contractor shall forward the names of any proposed peer and/or expert reviewer to the Board within 10 days of the date of the Board's referral of the case to the Contractor. Upon the receipt of the name of a proposed reviewer, the Board will perform a final screening of the proposed reviewer and will advise the Contractor within 5 business days of the Board's decision as to whether the proposed reviewer may be utilized. No proposed reviewer disapproved by the Board may be used by the Contractor for any subsequent review under this Contract. Except in cases in which the specialty or qualifications of the proposed Peer Reviewer are at issue, the Board is not required to advise the Contractor of the reasons why a proposed reviewer is unacceptable. No payment to the Contractor is due for any referral that the Department's Contract Monitor withdraws pursuant to this paragraph.

The timeline for screening of Peer Reviewers for second and third review reports in the case of a physician or allied health practitioner and a second report in the case of a physician assistant which the Board may require is set out in Subsection 3.2.3 (b), (c), (d).

The timeline for screening of peer and/or expert reviewers for reports which the Board has designated in advance in writing as expedited reviews are due in 30 days as set out in Subsection 3.2.3 (c),(d).

The Contractor is responsible for ensuring that the Curriculum Vitae of the Peer Reviewer is available and current within one year of the completed review. The Contractor must ensure that the Curriculum Vitae of each Reviewer contains current contact information

including a phone number and e-mail address. The Contractor must ensure that Peer Reviewers return calls or e-mails from prosecuting attorneys within three business days.

### **3.2.9 Assurance Against Conflicts of Interest**

The Contractor shall assure that the each Reviewer has no conflict of interest which would allow the objectivity of their opinions to be reasonably questioned. The Contractor shall not use a Reviewer who is relative, personal friend, business partner, supervisor or employee of the patient. The Contractor shall not use a reviewer who is a relative, personal friend, business partner, supervisor or employee of the investigated licensee. The Contractor shall not use a Reviewer who owes a debt to the investigated licensee, or to whom a debt is owed by the investigated licensee in question; nor shall the Contractor use a Reviewer who has a substantial business relationship with the licensee whether through a legal relationship or a pattern of referrals. The Contractor shall not use a Reviewer who is in direct and substantial professional or business competition with the licensee in question. The Contractor shall not use a Reviewer who works, or has worked, at the same facility as the licensee being investigated. Although there is no specific prohibition based on locality, the Contractor must be aware of possible conflicts arising from: (a) pattern of referrals, and (b) competition for patients or business. The Contractor shall in every case require each Reviewer to declare in writing that no relationship exists which will interfere with his or her objective judgment.

### **3.2.10 Confidentiality**

For purposes of this section, the term “Contractor” means the Contractor, its members, employees, subcontractors and agents, including any Peer Reviewers who are the Contractor’s members, employees, subcontractors or agents. To the extent that this section places a restriction on a member, employee, agent or subcontractor of the Contractor, the Contractor is responsible to inform any such member, employee, agent, or subcontractor of these requirements, to require compliance by contract or otherwise, and to be responsible to take reasonable measures to assure the enforcement of these requirements.

The Contractor agrees to keep information obtained in the course of this Contract confidential in compliance with Md. Code Ann., Health Occ. §§14-401, 14-401.1, 14-410;14-411 and 14-506. The Contractor agrees further to comply with any applicable state and federal confidentiality requirements regarding collection, maintenance and use of health and financial information. This includes, where appropriate, the federal Health Insurance Portability and Accountability Act (HIPAA, 42 U.S.C. §1320d et. seq. and implementing regulations at 45 CFR Parts 160 and 164) and the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General §§4-301 et. seq., MCMRA). This obligation includes providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Agency for information about its privacy practices in general or with respect to a particular individual, modifying such information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health and financial information.

### **3.2.11 Training**

The Contractor must train each selected reviewer, or certify to the Board that each selected reviewer has been trained, in the purpose, function and methods of the Board's case review process, including but not limited to all of the requirements of this Contract. A list of the essential elements of this training is attached as Attachment S. The Board reserves the right to modify this list of elements. The Contractor must submit the training materials. The Contractor may offer this training by classroom lecture, audio-visual presentation, or individual tutorial. The Contractor may also provide training by written materials or by an on-line course, provided that these methods require participation or testing by the trainee to ascertain that the trainee understands the nature of the undertaking. The Contractor must submit the training materials to the Board on an annual basis. The Board may make modifications to the training materials. The Contractor must submit a list of individual reviewers trained each quarter.

The Contractor shall permit a representative of the Board to participate in any training process and must, in other instructional environments, include any specific material designated by the Board. A Contractor may request Board assistance in setting up or conducting any training process, but the Board's response level is discretionary.

### **3.2.12 Quality Review**

The Board periodically may require feedback from reviewers on the process and quality review meetings with the Contractor. The Contractor is responsible for ensuring that any review reports submitted to the Board are responsive to the questions posed and meet the Board's requirements. Reports that are unacceptable to the Board will be rejected.

## **3.3 Security Requirements**

### **3.3.1 Employee Identification**

- (a) Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.
- (b) At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visual location at all times.

### **3.3.2 Information Technology**

- (a) Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.

- (b) The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

### 3.3.3 Criminal Background Check

Not required.

## **3.4 Insurance Requirements**

- 3.4.1 The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 3.4.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per occurrence.
- 3.4.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.4.4 The Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.
- 3.4.5 Within five (5) Business Days of recommendation for Contract award, the Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:
  - a. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
  - b. Commercial General Liability as required in Section 3.4.1.
  - c. Errors and Omissions/Professional Liability as required in Section 3.4.2.
  - d. Automobile and/or Commercial Truck Insurance as required in Section 3.4.3.
  - e. Employee Theft Insurance as required in Section 3.4.4.
- 3.4.6 The State shall be listed as an additional insured on the policies with the exception of Worker's Compensation Insurance and Professional Liability Insurance. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide

the Contract Monitor, by certified mail, not less than 45 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.

- 3.4.7 The Contractor shall require that any subcontractors providing services under this Contract obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

### **3.5 Problem Escalation Procedure**

- 3.5.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.

The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel, as directed should the Contract Monitor not be available.

- 3.5.2 The Contractor must provide the PEP no later than ten (10) Business Days after notice of Contract award or after the date of the Notice to Proceed, whichever is earlier. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- The process for establishing the existence of a problem;
- The maximum duration that a problem may remain unresolved at each level in the Contractor's organization before automatically escalating the problem to a higher level for resolution;
- Circumstances in which the escalation will occur in less than the normal timeframe;
- The nature of feedback on resolution progress, including the frequency of feedback to be provided to the State;
- Identification of, and contact information for, progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- A process for updating and notifying the Contract Monitor of any changes to the PEP.

Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

## **3.6 Invoicing**

### **3.6.1 General**

- (a) All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor. All invoices shall include the following information:
- Contractor name;
  - Remittance address;
  - Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
  - Invoice period;
  - Invoice date;
  - Invoice number;
  - State assigned Contract number;
  - State assigned (Blanket) Purchase Order number(s);
  - Goods or services provided; and
  - Amount due.

Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

- (b) The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.02.

### **3.6.2 Invoice Submission Schedule**

The Contractor shall submit invoices in accordance with the following schedule:

Invoices shall be submitted by the 15th day of the month for activities concluded during the preceding month and include a listing by individual case, with the Board's assigned case number, and by component completed in each case. The Board will not pay for one Peer Review report; payment requires both Peer Review reports to have been received by the Board.

The Board will pay the amount according to the Contractor's accepted rates in its Bid: 1) per timely delivery of completed Peer Review reports meeting these specifications; 2) per the Peer Reviewer's consultation with the Board's assigned attorney as required and performed; and 3) per case in which expert testimony in an administrative hearing is given. The Board will pay an all-inclusive rate per deliverable only; all administrative, personnel, legal and overhead expenses are the contractor's responsibility. Payment will be made within 30 days of receipt of the properly completed invoice which lists separately:

- 1) the timely Peer Review reports delivered which have met these specifications;

- 2) the consultations completed, as certified by the assigned attorney, and
- 3) the instances of testimony that were required and actually occurred.

### **3.7 MBE Reports**

This solicitation does not contain an MBE Goal.

### **3.8 VSBE Reports**

This solicitation does not contain a VSBE Goal.

### **3.9 SOC 2 Type II Audit Report**

A SOC 2 Type II Report is not a Contractor requirement for this Contract.

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## **SECTION 4 – BID FORMAT**

### **4.1 One Part Submission**

Bidders shall submit with their Bid all Minimum Qualification documentation required (see Section 2), and all Required Bid Submissions (see Section 4.4) in a single sealed package/envelope.

### **4.2 Labeling**

Each Bidder is required to label the sealed Bid. The Bid shall bear the IFB title and number, name and address of the Bidder, and closing date and time for receipt of the Bids.

### **4.3 Bid Price Form**

The Bid shall contain all price information in the format specified on the Bid Form (**Attachment F**). Complete the Bid Form only as provided in the Bid Pricing Instructions. Do not amend, alter, or leave blank any items on the Bid Form or include additional clarifying or contingent language on or attached to the Bid Form. If option years are included, Bidders must submit Bids for each option year. Failure to adhere to any of these instructions may result in the Bid being determined to be non-responsive and rejected by the Department.

### **4.4 Required Bid Submissions**

Bidders shall include the following with their Bid:

#### **4.4.1 Transmittal Letter:**

A Transmittal Letter shall accompany the Bid. The purpose of this letter is to transmit the Bid and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Bidder to the services and requirements as stated in this IFB. The Transmittal Letter should include the following:

- Name and address of the Bidder;
- Name, title, e-mail address, and telephone number of primary contact for the Bidder;
- Solicitation Title and Solicitation Number that the Bid is in response to;
- Signature, typed name, and title of an individual authorized to commit the Bidder to its Bid;
- Federal Employer Identification Number (FEIN) of the Bidder, or if a single individual, that individual's Social Security Number (SSN);
- Bidder's eMM number;
- Bidder's MBE certification number (if applicable);
- Acceptance of all State IFB and Contract terms and conditions (see Section 1.24);
- and

- Acknowledgement of all addenda to this IFB.

Any information which is claimed to be confidential is to be noted by reference and included after the Transmittal Letter. An explanation for each claim of confidentiality shall be included (see Section 1.14 “Confidentiality of Bids”).

**4.4.2 Minimum Qualifications Documentation:**

The Bidder shall submit any Minimum Qualifications documentation that may be required, as set forth in Section 2 “Bidder Minimum Qualifications.”

**4.4.3 Completed Required Attachments:** Submit three (3) copies of each with original signatures:

- Completed Bid Form (**Attachment F**).
- Completed Bid/Proposal Affidavit (**Attachment B**).
- Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**).

**4.4.4 Additional Attachments \*If Required:** Submit three (3) copies of each with original signatures, if required.

\* See appropriate IFB Section to determine whether the Attachment is required for this procurement:

- Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) \*see **Section 1.33**. This attachment must be provided in a separately sealed envelope within the main Bid package/envelope.
- Completed Federal Funds Attachment (**Attachment H**) \*see **Section 1.35**.
- Completed Conflict of Interest Affidavit and Disclosure (**Attachment I**) \*see **Section 1.36**.
- Completed Mercury Affidavit (**Attachment L**) \*see **Section 1.40**.
- Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule. (**Attachment M-1**) \*see **Section 1.41**. This attachment must be provided in a separately sealed envelope within the main Bid package/envelope.
- Completed Location of the Performance of Services Disclosure (**Attachment N**) \*see **Section 1.42**.
- Completed Bidder Affidavit (**Attachment Q**).

**4.4.5 References:**

At least three (3) references are requested from customers who are capable of documenting the Bidder’s ability to provide the services specified in this IFB. References used to meet any Bidder Minimum Qualifications (see Section 2) may be used to meet this request. Each reference shall be from a client for whom the Bidder has provided services within the past five (5) years and shall include the following information:

- Name of client organization;
- Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- Value, type, duration, and description of services provided.

The Department reserves the right to request additional references or utilize references not provided by a Bidder.

**4.4.6 List of Current or Prior State Contracts:**

Provide a list of all contracts with any entity of the State of Maryland for which the Bidder is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Bidder is to provide:

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
- c. The dollar value of the contract;
- d. The term of the contract;
- e. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- f. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Bidder's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

**4.4.7 Financial Capabilities:**

The Bidder shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

**4.4.8 Certificate of Insurance:**

The Bidder shall provide a copy of the Bidder's current certificate of insurance. The recommended awardee must provide a certificate of insurance with the prescribed limits set forth in Section 3.4 "Insurance Requirements," naming the State as an additional insured if required, within five (5) Business Days from notification by the Procurement Officer that the Bidder has been determined to be the apparent awardee.

**4.4.9 Subcontractors:**

The Bidder shall provide a complete list of all subcontractors that will work on the Contract if the Bidder receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform.

**4.4.10 Legal Action Summary:**

This summary shall include:

- i. A statement as to whether there are any outstanding legal actions or potential claims against the Bidder and a brief description of any action;
- ii. A brief description of any settled or closed legal actions or claims against the Bidder over the past five (5) years;

- iii. A description of any judgments against the Bidder within the past five (5) years, including the case name, number court, and what the final ruling or determination was from the court; and
- iv. In instances where litigation is on-going and the Bidder has been directed not to disclose information by the court, provide the name of the judge and location of the court.

#### **4.5 Reciprocal Preference**

Although Maryland law does not authorize procuring agencies to favor resident Bidders in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, COMAR 21.05.01.04 requires that procuring units apply a reciprocal preference under the following conditions:

- The most advantageous offer is from a responsible Bidder whose headquarters, principal base of operations, or principal site (that will primarily provide the services required under this IFB) is in another state.
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- The preference does not conflict with a Federal law or grant affecting the procurement Contract.

The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

#### **4.6 Delivery**

Bidders may either mail or hand-deliver Bids.

- 4.6.1 For U.S. Postal Service deliveries, any bid that has been received at the appropriate mail room, or typical place of mail receipt for the respective procuring unit by the time and date listed in the IFB will be deemed to be timely. If a Bidder chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. A Bidder using first class mail will not be able to prove a timely delivery at the mailroom and it could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit.
- 4.6.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Bidder. For any type of direct (non-mail) delivery, Bidders are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.

#### **4.7 Documents Required upon Notice of Recommendation for Contract Award**

Upon receipt of a Notification of Recommendation for Contract Award, the following documents shall be completed and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each with original signatures.

- a. signed Contract (**Attachment A**),
- b. completed Contract Affidavit (**Attachment C**),
- c. completed MBE **Attachments D-2 and D-3**, within ten (10) Working Days, if applicable; **\*see Section 1.33**,
- d. completed MBE **Attachment D-6** if a waiver has been requested, within ten (10) Working Days, if applicable; **\*see Section 1.33**,
- e. signed Non-Disclosure Agreement (**Attachment J**), if applicable; **\*see Section 1.37**,
- f. signed HIPAA Business Associate Agreement (**Attachment K**), if applicable; **\*see Section 1.38**,
- h. completed VSBE **Attachments M-2 and M-3**, if applicable **\*see Section 1.41**,
- i. completed DHR Hiring Agreement, **Attachment O**, if applicable **\*see Section 1.43**, and
- i. copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.4 “Insurance Requirements,” naming the State as an additional insured, if applicable; **\*see Section 3.4**.

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## **IFB ATTACHMENTS**

### **ATTACHMENT A – Contract**

This is the sample contract used by the Department. It is provided with the IFB for informational purposes and is not required to be submitted at Bid submission time. Upon notification of recommendation for award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer three (3) executed copies of the Contract within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to the Contractor.

### **ATTACHMENT B – Bid/Proposal Affidavit**

This Attachment must be completed and submitted with the Bid.

### **ATTACHMENT C – Contract Affidavit**

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award.

### **ATTACHMENT D – Minority Business Enterprise Forms**

If required (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D-1 through D-6. Attachment D-1 must be properly completed and submitted with the Bidder's Bid or the Bid will be deemed non-responsive and rejected. Within 10 Working Days of receiving notification of recommendation for Contract award, the Bidder must submit Attachments D-2 and D-3 and, if the Bidder has requested a waiver of the MBE goal, usually Attachment D-6.

### **ATTACHMENT E – Pre-Bid Conference Response Form**

It is requested that this form be completed and submitted as described in Section 1.7 by those potential Bidders that plan on attending the Pre-Bid Conference.

### **ATTACHMENT F – Bid Form Instructions and Bid Form**

The Bid Form must be completed and submitted with the Bid.

### **ATTACHMENT G – Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement**

Attachment G-1 Living Wage Affidavit of Agreement must be completed and submitted with the Bid.

### **ATTACHMENT H – Federal Funds Attachment**

If required (see Section 1.35), these Attachments must be completed and submitted with the Bid as instructed in the Attachments.

### **ATTACHMENT I – Conflict of Interest Affidavit and Disclosure**

If required (see Section 1.36), this Attachment must be completed and submitted with the Bid.

### **ATTACHMENT J – Non-Disclosure Agreement**

If required (see Section 1.37), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Bid.

### **ATTACHMENT K – HIPAA Business Associate Agreement**

If required (see Section 1.38), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Bid.

**ATTACHMENT L – Mercury Affidavit**

If required (see Section 1.40), this Attachment must be completed and submitted with the Bid.

**ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms**

If required (see Section 1.41), these Attachments include the VSBE Attachments M-1 through M-4. Attachment M-1 must be completed and submitted with the Bid. Attachment M-2 is required to be submitted within ten (10) Business Days of receiving notification of recommendation for award.

**ATTACHMENT N – Location of the Performance of Services Disclosure**

If required (see Section 1.44), this Attachment must be completed and submitted with the Bid.

**ATTACHMENT O – Department of Human Resources (DHR) Hiring Agreement**

If required (see Section 1.45), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

**ATTACHMENT P – Historical Info Only**

**ATTACHMENT Q – Bidder Affidavit**

**ATTACHMENT R – Guidelines on Using Report Forms**

**ATTACHMENT S - Elements on Training Program**

**ATTACHMENT T – Maryland Board of Physicians Compliant Process**

## ATTACHMENT A – CONTRACT

### Peer Review Services

THIS CONTRACT (the “Contract”) is made this (“X<sup>th</sup>”) day of (month), (year) by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the DEPARTMENT OF HEALTH AND MENTAL HYGIENE, OFFICE OF PROCUREMENT AND SUPPORT SERVICES.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

#### 1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “Bid” means the Contractor’s Bid dated July 8, 2014.
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contract Monitor” means the Department employee identified in Section 1.6 of the IFB as the Contract Monitor.
- 1.4 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.5 “Department” means the Maryland Department of Health and Mental Hygiene and any of its Agencies, Offices, Administrations, Facilities, or Commissions.
- 1.6 “IFB” means the Invitation for Bids for Peer Review Services Solicitation # DHMH OPASS 14-13752, and any addenda thereto issued in writing by the State.
- 1.7 “Procurement Officer” means the Department employee identified in Section 1.5 of the IFB as the Procurement Officer.
- 1.8 “State” means the State of Maryland.

#### 2. Scope of Contract

- 2.1 The Contractor shall provide deliverables, programs, goods, and services specific to the Contract awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The IFB

Exhibit B – State Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_ (date of Attachment C)

Exhibit C – The Bid

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the IFB. No other order, statement, or conduct

of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

### **3. Period of Performance.**

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately three (3) years beginning 9/4/2014 and ending on 9/3/2017.
- 3.2 Further, this Contract may be extended for two one (1) year renewal option years at the sole discretion of the Department and at the prices quoted in the Bid for Option Years.
- 3.3 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

### **4. Consideration and Payment**

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted on the Bid Form (Attachment F). Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract shall not exceed \$ (Not-to-Exceed amount). Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the above specified amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult with the State and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached; and (b) when applicable secure databases, systems, platforms, and/or applications on which the

Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is **(Contractor's FEIN or SSN)**. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 as from time-to-time amended, are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.
- 4.5 Contractor's eMarylandMarketplace vendor ID number is **(Contractor's eMM number)**.

## **5. Rights to Records**

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## **6. Exclusive Use**

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

## **7. Patents, Copyrights, and Intellectual Property**

- 7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.
- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **8. Confidentiality**

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws, including without limitation, HIPAA, the HI-TECH ACT, and the Maryland Medical Records Act, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has

been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

8.2 This Section 8 shall survive expiration or termination of this Contract.

## **9. Loss of Data**

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.

## **10. Indemnification**

10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.

10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.

10.3 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.

10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.

10.5 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

10.6 This Section 10 shall survive termination of this Contract.

## **11. Non-Hiring of Employees**

No official or employee of the State, as defined under Md. Code Ann., State Government Article, § 15-102, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## **12. Disputes**

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## **13. Maryland Law**

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.
- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

## **14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

## **15. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

## **16. Non-availability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

## **17. Termination for Cause**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

## **18. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

## **19. Delays and Extensions of Time**

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or

suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**20. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

**21. Pre-Existing Regulations**

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

**22. Financial Disclosure**

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

**23. Political Contribution Disclosure**

The Contractor shall comply with Md. Code Ann., Election Law Article, §§ 14-101 through 14-108, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (a) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (b) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31.

**24. Documents Retention and Inspection Clause**

The Contractor and subcontractors shall retain and maintain all records and documents relating to this contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. This Section 24 shall survive expiration or termination of the Contract.

If the Contractor supplies services to a State residential health care facility under the Mental Hygiene Administration, the Family Health Administration, the Alcohol and Drug Abuse

Administration, or the Developmental Disabilities Administration, the Contractor agrees, in addition to the requirements above,:

- 24.1 That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly-authorized representatives, shall be granted access to the Contractor's contract, books, documents, and records necessary to verify the cost of the services provided under this contract, until the expiration of four (4) years after the services are furnished under this contract; and
- 24.2 That similar access will be allowed to the books, documents, and records of any organization related to the Contractor or controlled by the Contractor (as those terms are defined in 42 C.F.R. (420.301) if that organization is subcontracting to provide services with a value of \$10,000 or more in a twelve (12) month period to be reimbursed through funds provided by this contract.

## **25. Compliance with Laws**

The Contractor hereby represents and warrants that:

- 25.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 25.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 25.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 25.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **26. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Bid/Proposal.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Bid/Proposal, was inaccurate, incomplete, or not current.

## **27. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer provided, however, that a contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The

Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## **28. Liability**

- 28.1 For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, Contractor shall be liable as follows:
- a. For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
  - b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
  - c. For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

## **29. Parent Company Guarantee (If Applicable)**

(Corporate name of Contractor's Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor's Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, suit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

## **30. Commercial Nondiscrimination**

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This

clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

### **31. Prompt Pay Requirements**

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- a. Not process further payments to the contractor until payment to the subcontractor is verified;
  - b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
  - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
  - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - e. Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:
- a. Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
  - b. An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- a. Affect the rights of the contracting parties under any other provision of law;
  - b. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or

- c. Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
  - b. This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.
    - iv. Verification shall include a review of:
      - (a) The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
      - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
  - c. If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
  - d. If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
    - i. Terminate the contract;
    - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
    - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
  - e. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

### **32. Contract Monitor and Procurement Officer**

The work to be accomplished under this Contract shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

### **33. Notices**

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State: \_\_\_\_\_

Procurement Officer  
Maryland Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street, Room 416  
Baltimore, Maryland 21201

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**34. Federal Department of Health and Human Services (DHHS) Exclusion Requirements**

The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this contract, and to notify the DHMH Office of Systems, Operations and Pharmacy immediately of any identification of the contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the contractor or any contractor employee.

**35. Confidentiality**

The Contractor, its members, employees, subcontractors and agents, including any Peer Reviewers who are the contractor’s members, employees, sub-contractors or agents agrees to keep information obtained in the course of this contract confidential in compliance with Md. Code Ann., Health Occ. §§1-401,14-410,14-411 and 14-506. \_\_\_\_\_ The Contractor agrees further to comply with any applicable State and federal confidentiality requirements regarding collection, maintenance, and use of health and financial information. This includes, where appropriate, the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations at 45 C.F.R. Parts 160 and 164, and the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Department for information about its privacy practices in general or with respect to a particular individual, modifying information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health and financial information.

### **36. Compliance with HIPAA and State Confidentiality Law**

- 36.1 In addition to complying with the confidentiality provisions of Md. Code Ann., Health Occ. §§1-401, 14-410, 14-411 and 14-506, the Contractor shall comply with all applicable requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations, including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §4-301 et. Seq. This obligation includes:
- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
  - (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
  - (c) Restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Agency for information about its privacy practices in general or with respect to a particular individual, modifying such information as may be required by good professional practice as authorized by law; and
  - (d) Otherwise providing good information management practices regarding all health information and medical records.
- 36.2 If in connection with the procurement or at any time during the term of the Contract, the Department determines that functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form required by the Department.
- 36.3 Protected Health Information as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is: individually identifiable; created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

### **37. Hiring Agreement**

The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Resources (DHR) Hiring Agreement (Attachment O). The Hiring Agreement is to be executed by the Bidder/Offeror and delivered to the Procurement Officer within ten (10) Working Days

following receipt of notice by the Bidder/Offeror that it is being recommended for contract award. The Hiring Agreement will become effective concurrently with the award of the contract.

The Hiring Agreement provides that the Contractor and DHR will work cooperatively to promote hiring by the Contractor of qualified individuals for job openings resulting from this procurement, in accordance with Md. Code Ann., State Finance and Procurement Article §13-224.

### **38 Limited English Proficiency**

The contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and DHMH Policy 02.06.07.

### **39. Miscellaneous**

39.1 Any provision of this contract which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this contract and continue in full force and effect.

39.2 If any term contained in this contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

### **40. Liquidated Damages**

40.1 The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor expressly agrees that the State may withhold payment on any invoices as an offset against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of each violation.

- 40.2 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): \$ (dollar amount) per day until the monthly report is submitted as required.
- 40.3 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): \$(dollar amount) per MBE subcontractor.
- 40.4 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- 40.5 Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- 40.6 Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$(dollar amount) per day until the undisputed amount due to the MBE subcontractor is paid.

**IN WITNESS THEREOF**, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND  
MENTAL HYGIENE

\_\_\_\_\_  
By:

\_\_\_\_\_  
By: Joshua M. Sharfstein, M.D., Secretary

\_\_\_\_\_  
Date

Or designee:  
\_\_\_\_\_

\_\_\_\_\_  
Date

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_  
(Date) (BPW Item #)

**ATTACHMENT B – BID/PROPOSAL AFFIDAVIT**

**A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned Bidder/Offeree hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/Offeree has considered all quotes submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeree on this project, and terminate any contract awarded based on the Bid/Proposal. As part of its Bid/Proposal, the Bidder/Offeree herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeree discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder/Offeree agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

**B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.**

The undersigned Bidder/Offeree hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/Proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Bid/Proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offer or on this project, and terminate any contract awarded based on the Bid/Proposal.

## B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

## C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the

sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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#### D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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#### E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

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#### F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/Proposal that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/Proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/Proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

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**L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO  
(FOR SUPPLIES AND SERVICES CONTRACTS)**

**I FURTHER AFFIRM THAT:**

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

**M. ACKNOWLEDGEMENT**

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Bid/Proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.**

Date: \_\_\_\_\_

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

**ATTACHMENT C – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation —  domestic or  foreign;
- (2) Limited Liability Company —  domestic or  foreign;
- (3) Partnership —  domestic or  foreign;
- (4) Statutory Trust —  domestic or  foreign;
- (5)  Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID

Number: \_\_\_\_\_ Address: \_\_\_\_\_

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID

Number: \_\_\_\_\_ Address: \_\_\_\_\_

**C. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

#### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

##### I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

#### E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

##### I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its Bid/Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

## F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 201\_\_\_\_, and

executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_ (printed name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

**ATTACHMENT D – MINORITY BUSINESS ENTERPRISE FORMS**

This solicitation does not include a Minority Business Enterprise (MBE) subcontractor participation goal.

**ATTACHMENT E – PRE-BID CONFERENCE RESPONSE FORM**

**Solicitation Number OPASS (14-13752)  
Peer Review Services for the MD Board of Physicians**

A Pre-Bid Conference will be held at 10:00 a.m. on Wednesday, June 18, 2014, at 4201 Patterson Ave., NW, Baltimore, MD 21215. Please return this form by Friday, June 13, 2014 advising whether or not you plan to attend.

Return via e-mail or fax this form to the Procurement Coordinator:

Regina Rouchard  
Maryland Board of Physicians  
Department of Health and Mental Hygiene  
4201 Patterson Ave., NW, Baltimore, MD 21215  
Email: regina.rouchard@maryland.gov  
Fax #: 410-358-1298

Please indicate:

Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see IFB § 1.7 “Pre-Bid Conference”):

---

Signature Title

---

Name of Firm (please print)

## ATTACHMENT F – BID PRICING INSTRUCTIONS

In order to assist Bidders in the preparation of their Bid and to comply with the requirements of this solicitation, Bid Pricing Instructions and a Bid Form have been prepared. Bidders shall submit their Bid on the Bid Form in accordance with the instructions on the Bid Form and as specified herein. Do not alter the Bid Form or the Bid Form may be rejected. The Bid Form is to be signed and dated, where requested, by an individual who is authorized to bind the Bidder to the prices entered on the Bid Form.

The Bid Form is used to calculate the Bidder's TOTAL BID PRICE. Follow these instructions carefully when completing your Bid Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this IFB and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Bid Form shall be filled in. Any blanks may result in the Bid being regarded as non-responsive and thus rejected. Any changes or corrections made to the Bid Form by the Bidder prior to submission shall be initialed and dated.
- F) Except as instructed on the Bid Form, nothing shall be entered on or attached to the Bid Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions usually render the Bid non-responsive, which means it will be rejected.
- G) It is imperative that the prices included on the Bid Form have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Form. Any incorrect entries or inaccurate calculations by the Bidder will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12, and may cause the Bid to be rejected.
- H) If option years are included, Bidders must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and will comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the IFB at the prices entered in the Bid Form.
- I) All Bid prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the IFB. The Bid price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the IFB, sample amounts used for calculations on the Bid Form are typically estimates for bidding purposes only. The Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

K) Failure to adhere to any of these instructions may result in the Bid being determined non-responsive and rejected by the Department.

**ATTACHMENT F – BID FORM**

**BID FORM**

The Bid shall contain all price information in the format specified on these pages. Complete the Bid Form only as provided in the Bid Pricing Instructions. Do not amend, alter or leave blank any items on the Bid Form. If option years are included, Bidders must submit Bids for each option year. Failure to adhere to any of these instructions may result in the bid being determined non-responsive and rejected by the Department.

The bid must be a fully loaded rate, *i.e.*, all of the bidder’s costs must be the responsibility of the bidder and should be factored into the piece rate by the bidder. In no instance will amortization of costs be allowed, including the instance of termination of the contract due to the unavailability of funds.

Peer Review Services for the Maryland Board of Physicians

Bidder's Name: \_\_\_\_\_

Base Year 1

Two-Report Peer Review, single record @ \$\_\_\_\_\_/report X 10 reports = \$\_\_\_\_\_  
Two-Report Peer Review, multiple records @ \$\_\_\_\_\_/report X 40 reports = \$\_\_\_\_\_  
One-Report Peer/Expert Report @ \$\_\_\_\_ per report X 5 reports = \$\_\_\_\_\_  
Two-Report Peer/Expert Report @ \$\_\_\_\_ per report X 10 reports = \$\_\_\_\_\_  
Consult with AG’s Office @ \$ \_\_\_\_ per consultation X 20 consultations = \$\_\_\_\_\_  
Appear as Expert Witness @ \$\_\_\_\_ per appearance X 5 appearances = \$\_\_\_\_\_  
Expedited Peer Review @ \$\_\_\_\_ per review X 5 reviews = \$\_\_\_\_\_  
**Total Base Year 1 = \$----- (a)**

Base Year 2

Two-Report Peer Review, single record @ \$\_\_\_\_\_/report X 10 reports = \$\_\_\_\_\_  
Two-Report Peer Review, multiple records @ \$\_\_\_\_\_/report X 40 reports = \$\_\_\_\_\_  
One-Report Peer/Expert Report @ \$\_\_\_\_ per report X 5 reports = \$\_\_\_\_\_  
Two-Report Peer/Expert Report @ \$\_\_\_\_ per report X 10 reports = \$\_\_\_\_\_  
Consult with AG’s Office @ \$ \_\_\_\_ per consultation X 20 consultations = \$\_\_\_\_\_  
Appear as Expert Witness @ \$\_\_\_\_ per appearance X 5 appearances = \$\_\_\_\_\_  
Expedited Peer Review @ \$\_\_\_\_ per review X 5 reviews = \$\_\_\_\_\_  
**Total Base Year 2 = \$----- (b)**

Base Year 3

Two-Report Peer Review, single record @ \$\_\_\_\_\_/report X 10 reports = \$\_\_\_\_\_  
Two-Report Peer Review, multiple records @ \$\_\_\_\_\_/report X 40 reports = \$\_\_\_\_\_  
One-Report Peer/Expert Report @ \$\_\_\_\_ per report X 5 reports = \$\_\_\_\_\_  
Two-Report Peer/Expert Report @ \$\_\_\_\_ per report X 10 reports = \$\_\_\_\_\_  
Consult with AG’s Office @ \$ \_\_\_\_ per consultation X 20 consultations = \$\_\_\_\_\_  
Appear as Expert Witness @ \$\_\_\_\_ per appearance X 5 appearances = \$\_\_\_\_\_  
Expedited Peer Review @ \$\_\_\_\_ per review X 5 reviews = \$\_\_\_\_\_  
**Total Base Year 3 = \$----- (c)**

Option Year One

Two-Report Peer Review, single record @ \$\_\_\_\_\_ /report X 10 reports = \$\_\_\_\_\_

Two-Report Peer Review, multiple records @ \$\_\_\_\_\_ /report X 40 reports = \$\_\_\_\_\_

One-Report Peer/Expert Report @ \$\_\_\_\_\_ per report X 5 reports = \$\_\_\_\_\_

Two-Report Peer/Expert Report @ \$\_\_\_\_\_ per report X 10 reports = \$\_\_\_\_\_

Consult with AG's Office @ \$ \_\_\_\_\_ per consultation X 20 consultations = \$\_\_\_\_\_

Appear as Expert Witness @ \$\_\_\_\_\_ per appearance X 5 appearances = \$\_\_\_\_\_

Expedited Peer Review @ \$\_\_\_\_\_ per review X 5 reviews = \$\_\_\_\_\_

**Total Option Year One = \$------(d)**

Option Year Two

Two-Report Peer Review, single record @ \$\_\_\_\_\_ /report X 10 reports = \$\_\_\_\_\_

Two-Report Peer Review, multiple records @ \$\_\_\_\_\_ /report X 40 reports = \$\_\_\_\_\_

One-Report Peer/Expert Report @ \$\_\_\_\_\_ per report X 5 reports = \$\_\_\_\_\_

Two-Report Peer/Expert Report @ \$\_\_\_\_\_ per report X 10 reports = \$\_\_\_\_\_

Consult with AG's Office @ \$ \_\_\_\_\_ per consultation X 20 consultations = \$\_\_\_\_\_

Appear as Expert Witness @ \$\_\_\_\_\_ per appearance X 5 appearances = \$\_\_\_\_\_

Expedited Peer Review @ \$\_\_\_\_\_ per review X 5 reviews = \$\_\_\_\_\_

**Total Option Year Two = \$------(e)**

**Total Bid Price (a) +(b) + (c) + (d) + (e) = \$\_\_\_\_\_**  
**(Basis for Award)**

Submitted By:

Authorized Signature: \_\_\_\_\_ Date:

\_\_\_\_\_  
Printed Name and Title:

\_\_\_\_\_  
Company Name:

\_\_\_\_\_  
Company Address:

\_\_\_\_\_  
Location(s) from which services will be performed (City/State):

\_\_\_\_\_  
FEIN: \_\_\_\_\_

eMM #: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ -- \_\_\_\_\_

Fax: (\_\_\_\_\_) \_\_\_\_\_ -- \_\_\_\_\_

E-mail: \_\_\_\_\_

BID PAGE

Maryland Board of Physicians Peer Review Services

Bidder's Name: \_\_\_\_\_

The bidders guarantee these bids for the term of the contract.

Bid Prices Attested to by \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

Federal Tax I.D.# \_\_\_\_\_

**NOTE 1:** The Department intends to make a single Award to a vendor that can arrange Peer Review services for all possible specialties as a result of this solicitation. This IFB shall be an Indefinite Quantity Contract with Fixed Unit Prices in accordance with COMAR 21.06.03.06.

**NOTE 2:** The Board does not guarantee any maximum or minimum quantities under the Contract.

**NOTE 3.** All bid prices entered above shall be guaranteed for the entire Contract term and are to be fully-loaded prices that include all costs/expenses associated with the provision of services as required by this IFB. The bid prices shall include, but are not limited to: Labor, Profit/Overhead, General Operating and all other expenses except as expressly excluded in the IFB specifications.

Important: Do not alter this page: Failure to fill out this bid page completely or altering the bid page in any way may render your bid non-responsive. Should you have any questions regarding this bid page contact the Procurement Officer identified in PART I.

**ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS**

**Living Wage Requirements for Service Contracts**

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
    - (a) Has a State contract for services valued at less than \$100,000, or
    - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
  - (2) A Subcontractor who:
    - (a) Performs work on a State contract for services valued at less than \$100,000,
    - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
    - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B(3) or C below.
  - (3) Service contracts for the following:
    - (a) Services with a Public Service Company;
    - (b) Services with a nonprofit organization;
    - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
    - (d) Services between a Unit and a County or Baltimore City.

- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.

- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dllr.state.md.us/labor/> and clicking on Living Wage for State Service Contracts.

**ATTACHMENT G-1**

**Maryland Living Wage Requirements Affidavit of Agreement**

(submit with Bid/Proposal)

Contract No. \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**If the Contract Is Exempt from the Living Wage Law**

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland's Living Wage Law for the following reasons (check all that apply):

- Bidder/Offeror is a nonprofit organization
- Bidder/Offeror is a public service company
- Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

**If the Contract Is a Living Wage Contract**

- A. The Undersigned, being an authorized representative of the above-named Contractor, hereby affirms its commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.
- B. \_\_\_\_\_(initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract
- The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Name (Typed or Printed)

\_\_\_\_\_  
Witness Signature Date

**(submit with Bid/Proposal)**

**ATTACHMENT H - FEDERAL FUNDS ATTACHMENT**

This solicitation does not include a Federal Funds Attachment.

**ATTACHMENT I – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

**Reference COMAR 21.05.08.08**

**(submit with Bid/Proposal)**

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a Bidder/Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/Proposal is made.

C. The Bidder/Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The Bidder/Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder/Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Bidder/Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Authorized Representative and Affiant)

## ATTACHMENT J – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through its Department of Health and Mental Hygiene (the “Department”), and \_\_\_\_\_ (the “Contractor”).

### RECITALS

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for Peer Review Services Solicitation # DHMH OPASS 14-13752; and

**WHEREAS**, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively the “Contractor’s Personnel”) with access to certain information the State deems confidential information (the “Confidential Information”).

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the IFB and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge the parties do hereby agree as follows:

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT J-1. Contractor shall update ATTACHMENT J-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the IFB or who will otherwise have a role in performing any aspect of the IFB, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to

take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. Contractor shall, at its own expense, return to the Department, all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
  - a. This Agreement shall be governed by the laws of the State of Maryland;
  - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
  - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
  - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
  - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
  - f. The Recitals are not merely prefatory but are an integral part hereof; and

- g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

**IN WITNESS WHEREOF**, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

Contractor: \_\_\_\_\_

Maryland Department of Health and Mental Hygiene

By: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**NON-DISCLOSURE AGREEMENT - ATTACHMENT J-1**

**LIST OF CONTRACTOR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN  
ACCESS TO THE CONFIDENTIAL INFORMATION**

<b>Printed Name and Address of Individual/Agent</b>	<b>Employee (E) or Agent (A) Date</b>	<b>Signature</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**NON-DISCLOSURE AGREEMENT – ATTACHMENT J-2**

**CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and \_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 20\_\_\_\_ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.**

DATE: \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)

**ATTACHMENT K – HIPAA BUSINESS ASSOCIATE AGREEMENT**

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”) is made by and between the Maryland Board of Physicians, a unit of the Maryland Department of Health and Mental Hygiene (herein referred to as “Covered Entity”) and \_\_\_\_\_ (Insert Name of Contractor) (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§ 4-301 *et seq.*) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

**DEFINITIONS.**

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure,

Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

B. Specific definitions:

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean (**Insert Name of Contractor**).
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean (**Insert Name of Procuring Unit**).
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
4. Protected Health Information (“PHI”). Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103.

**PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.**

- A. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement or as required by law.
- B. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity’s policies and procedures regarding minimum necessary use of PHI.
- C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.
- D. Business Associate may, if directed to do so in writing by Covered Entity, create a limited data set, as defined at 45 CFR 164.514(e)(2) , for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 CFR § 164.514(e)(2). Business Associate will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 CFR § 164.514(e)(4), with the limited data set recipient. Business Associate will report any material breach or violation of the data use agreement to Covered Entity immediately after it becomes aware of any such material breach or violation.

- E. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- F. The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the State's payment of Business Associate for its performance pursuant to the Underlying Agreement.
- G. The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

**DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.**

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law;
- B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
- C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- D.
  - 1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure;
  - 2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:
    - A. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1,

Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;

- B. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
- C. Is in substantially the same form as **ATTACHMENT K-1** attached hereto; and
- D. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
  - i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
  - iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
  - iv) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
  - v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
- E. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§

164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;

- F. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- G. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
- H. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
- I. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- J. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.
- K. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

#### **IV. TERM AND TERMINATION**

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for Peer Review Services for the Md. Board of Physicians, Solicitation # DHMH OPASS 14-13752, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI

created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.

- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or
  2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered entity determines or reasonably believes that cure is not possible.
- C. Effect of Termination.
1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
  2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.
- D. Survival. The obligations of Business Associate under this Section shall survive the termination of this agreement.

## V. **CONSIDERATION**

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

## VI. **REMEDIES IN EVENT OF BREACH**

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to Covered Entity at law or in equity.

#### **VII. MODIFICATION; AMENDMENT**

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA rules and any other applicable law.

#### **VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES**

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

#### **IX. COMPLIANCE WITH STATE LAW**

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

#### **X. MISCELLANEOUS**

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.

- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Ramiak James, Esq.  
 Privacy Officer and Compliance Analyst  
 Department of Health & Mental Hygiene  
 Office of the Inspector General  
 201 W. Preston Street, Floor 5  
 Baltimore, MD 21201-2301  
 Phone: (410) 767-5411

- D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Attention: \_\_\_\_\_  
 Phone: \_\_\_\_\_

- E. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.
- F. Severability. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- G. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.
- H. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

**COVERED ENTITY:**

**BUSINESS ASSOCIATE:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date:  
\_\_\_\_\_

Date:  
\_\_\_\_\_

**FORM OF NOTIFICATION TO COVERED ENTITY OF  
BREACH OF UNSECURED PHI**

This notification is made pursuant to Section III.2.D(3) of the Business Associate Agreement between Md. Board of Physicians a unit of the Maryland Department of Health and Mental Hygiene (DHMH), and \_\_\_\_\_  
(Business Associate).

Business Associate hereby notifies DHMH that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach:

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Date of the breach: \_\_\_\_\_ Date of discovery of the breach:

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Does the breach involve 500 or more individuals? Yes/No      If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach:

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Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

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Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:

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Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

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Email

Address: \_\_\_\_\_

PhoneNumber: \_\_\_\_\_

**ATTACHMENT L – MERCURY AFFIDAVIT**

This solicitation does not include the procurement of products known to likely include mercury as a component.

**ATTACHMENT M – VETERAN-OWNED SMALL BUSINESS ENTERPRISE**

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

**ATTACHMENT N – LOCATION OF THE PERFORMANCE OF SERVICES  
DISCLOSURE**

**(submit with Bid/Proposal)**

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Bid/Proposal submitted in response to Solicitation No.

\_\_\_\_\_, the following disclosures are hereby made:

1. At the time of Bid/Proposal submission, the Bidder/Offeror and/or its proposed subcontractors:

\_\_\_ have plans

\_\_\_ have **no** plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Bidder/Offeror or its proposed subcontractors, the Bidder/Offeror shall answer the following (attach additional pages if necessary):

a. Location(s) services will be performed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Reasons why it is necessary or advantageous to perform services outside the United States:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned, being an authorized representative of the Bidder/ hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

Date: \_\_\_\_\_

Bidder/Offer or  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Please be advised that the Department may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States exceeds by an unreasonable amount the price of services provided outside the United States; or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

\_\_\_\_\_  
**Agency Control Number**

**MARYLAND DEPARTMENT OF HUMAN RESOURCES  
HIRING AGREEMENT**

This Hiring Agreement (“Agreement”) is effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and is entered into by and between the Maryland Department of Human Resources (“Department”) and \_\_\_\_\_ (the “Contractor”) pursuant to State Finance Procurement Article, § 13-224, Annotated Code of Maryland, arising out of a Contract for services between Contractor and \_\_\_\_\_ (“Entity”), contract number \_\_\_\_\_ (“Procurement Contract”).

**WITNESSETH:**

WHEREAS, the Department has identified the Procurement Contract as eligible for execution of this Agreement; and,

WHEREAS, the Contractor and the Entity, have discussed and reviewed an inventory of job openings that exists or the Contractor is likely to fill during the term of the Procurement Contract in the State of Maryland; and

WHEREAS, the Contractor, Department and the Entity have discussed and reviewed the job descriptions, locations, and skill requirements for those positions; and

WHEREAS, the Department and the Entity have identified and discussed with the Contractor the workforce related benefits and support services available to the Contractor as a result of the Agreement including:

- Medicaid coverage for the employee and the employee’s dependents for up to one year after placement in the job;
- Maryland Children’s Health Program (MCHP) medical coverage for the employee’s dependents after one year of employment for as long as eligibility is met;
- Food Stamps for the employee and the employee’s dependents for as long as eligibility requirements are met;
- Child Care subsidies for the employee’s dependents for up to one year after employment as long as eligibility requirements are met;
- Transportation subsidies for the employee for a period of time after employment;

- Other Retention services including counseling on an as needed basis; and
- Assistance with claiming tax credits for hiring Candidates.

WHEREAS, the Contractor and Department agree to work cooperatively to develop responses to the workforce development requirements faced by the Contractor and to promote the hiring of the Department’s current and former Family Investment Program (“FIP”) recipients, their children, foster youth, and child support obligors (“Candidates”) by the Contractor.

NOW THEREFORE, upon valuable consideration received, the Contractor and the Department specifically agree as follows:

**A. The CONTRACTOR will:**

1. Notify the Department of all job openings that exists or result from the Procurement Contract.
2. Declare the Department the “first source” in identifying and hiring Candidates for those openings.
3. Work with Department as necessary and appropriate, to develop necessary training programs which enable Candidates to qualify for and secure the jobs.
4. Give first preference and first consideration, to the extent permitted by law and any existing labor agreements, to Candidates the Department refers.
5. Agree to give Candidates referred to the Contractor by the Department priority in the filling of a job opening so long as the Candidate meets the qualifications of the position and the Department refers qualified Candidates within three (3) working days.
6. Provide the DEPARTMENT with feedback regarding the disposition of referrals made, to include an explanation of why any such Candidate was not hired or considered qualified.
7. Designate this individual to be the specific contact person:

\_\_\_\_\_

Name

\_\_\_\_\_

Address

\_\_\_\_\_

Telephone #

\_\_\_\_\_

Fax #

\_\_\_\_\_

e-Mail

who will:

- provide additional information regarding ‘first source’ jobs and clarify their requirements;
- receive Department referrals, and

- provide feedback to a Department account representative upon request regarding the dispositions of those referrals as well as the progress/employment status of those Candidates hired by the Contractor.

**B. The Department will designate an account representative who will:**

1. Process all the Contractor's job notices in accordance with this "Agreement".
1. Refer screened and qualified Candidates to the Contractor's designated contact person.
2. Make referrals in a timely manner, that is, within three (3) working days after receiving the Contractor's job opening notices.
4. Assist in the development of any mutually agreed upon training and/or internship programs that will better prepare Candidates for employment with the Contractor.
5. Provide follow-up and post hire transitional/supportive services, (e.g. Medicaid, MCHP, Food Stamps, child care, transportation, retention counseling, and access to tax credits) as necessary and appropriate.
6. Insure that the Contractor is advised of available subsidies and provide any assistance to the Contractor to obtain those subsidies.
7. Report the Contractor to the procurement Entity if the Contractor does not fulfill its responsibilities in accordance with this Agreement.
8. Review and evaluate the effectiveness of this undertaking with the Contractor and make modifications as necessary and appropriate.

**C. DISCLAIMERS**

Nothing in this Agreement shall cause the Contractor, except as explicitly provided in Section A above, to alter existing hiring practices or to hire an individual into a position for which he/she is not qualified.

**D. NON-DISCRIMINATION**

The Contractor agrees that there shall be no discrimination against any employee or Candidate for employment because of race, color, sex, religion, national origin, age, sexual preference, disability or any other factor specified in Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1983 and subsequent amendments and that they will comply with all other pertinent federal and State laws regarding discrimination.

**E. MARYLAND LAW PREVAILS**

The place of performance of this Agreement shall be the State of Maryland. This Agreement shall be construed, interpreted, and enforced according to the laws and regulations of the State of Maryland, including approval of the Board of Public Works where appropriate.

**F. EFFECTIVE DATE**

This Agreement shall take effect on the date of the aforementioned Procurement Contract, which is for the period \_\_\_\_\_ through \_\_\_\_\_, and it shall remain in effect for the duration of the Procurement Contract, including any option periods or extensions.

IN WITNESS, WHEREOF, the Contractor and the Department have affixed their signatures below:

**FOR THE CONTRACTOR:**

**FOR THE DEPARTMENT**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**TITLE**

Hiring Agreement Coordinator  
**TITLE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

**ATTACHMENT P – HISTORICAL INFORMATION**

Historical Information — For General Informational Use Only

Medical Specialties Utilized for Peer Review

Specialty/ Year	2011	2011	2012	2012	2013	2013
	Single Patient Reviews	Multiple Patient Reviews	Single Patient Reviews	Multiple Patient Reviews	Single Patient Reviews	Multiple Patient Reviews
INTERNAL MEDICINE	4	4	15	8		11
FAMILY PRACTICE	1	3	1	7	1	2
OB/GYN	1	4	8	7	2	2
PSYCHIATRY	2	1	3	5		1
ORTHOPEDICS	1	2	3	3		3
SURGERY	1	6	14	4		4
PEDIATRICS		1	3	3		3
EMERGENCY MEDICINE			2		1	1
RADIOLOGY			5		1	
ANESTHESIOLOGY		1	3	1		
OPHTHALMOLOGY	1		1	1		
NEUROLOGY			2	1		2
UROLOGY			2	2		
PHYSICAL MEDICINE			1	3		2
PAIN TREATMENT	1		3			3
RENAL TRANSPLANT			1			
ALLERGY/IMMUNO-LOGY						
GYN. ONCOLOGY						
OTOLARYNGOLOGY						
SPORTS MEDICINE		1				
PULMONARY			1			
CARDIOLOGY			2			
DERMATOLOGY				1		
REHABILITATION MEDICINE						
						1

**ATTACHMENT Q – BIDDER AFFIDAVIT**

**STATE OF MARYLAND  
Affidavit**

I am over the age of 18 years and competent to testify. I hereby declare and affirm under the penalties of perjury that I am the \_\_\_\_\_ (*Position*) and as such I am an authorized agent for the bidder \_\_\_\_\_ who has bid or intends to bid on the solicitation for the Peer Review services by the Maryland Board of Physicians.

I have reviewed the solicitation and am aware that the required work plan mandates that all physician reviewers must be Board certified by the American Board of Medical Specialties or the American Osteopathic Association and have five or more years' post-residency, clinical experience in the practice of medicine. I am also aware that all allied health practitioner and physician assistant reviewers must have five or more years' clinical experience in the corresponding discipline.

I certify that \_\_\_\_\_ (*Bidder*) has more than five years of experience coordinating review services for a governmental agency.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Bidder)

## ATTACHMENT R – GUIDELINES FOR USING REPORT FORMS

### MARYLAND BOARD OF PHYSICIANS

Maryland Department of Health & Mental Hygiene 4201  
Patterson Avenue Baltimore, Maryland 21215-0095

Telephone 410-764-4777

Toll Free 800-492-6836

Fax 410-358-2252

### GENERAL GUIDELINES FOR USING THE PEER REVIEW REPORT FORM

The Maryland Board of Physicians (MBP) has developed electronic forms that are to be used for standard of care cases that are referred to a contract agency for peer review. The guidelines apply to the following electronic document:

- **Peer Review Form-Incident Case/ Practice Review—this** document is to be used by the MBP's Compliance Unit and the Peer Reviewers. The MBP should complete Section A (Case Background) in order to ensure that the appropriate material is provided and that the Peer Reviewer understands the focus of the review. The rest of the Peer Review Form, Sections B - D must be completed by the Peer Reviewer.

#### Using the electronic Peer Review forms:

- The electronic Peer Review forms have been developed using Microsoft Word form tools.
- To use the form, follow the following steps:
  1. Click on the form and open the document
  2. A password menu will pop up, don't enter a password. Instead click on the "read-only option".
  3. Save the file under a different name in a folder on your computer.
  4. Complete the form.
- In order to complete the form, Sections A – C, fill out only the gray areas.
  1. For text fields ( ), allows typing in text in a standard format. Text entered into these fields can be as brief or as lengthy as necessary.
  2. For drop-down fields (Select One), simply place the cursor on the drop down menu, place the cursor on the appropriate option and right click.
  3. When you have completed the form, print the form and sign and/or initial the designated sections.

The form is protected - only the gray areas can be

#### changed. **General information about Peer Reviews:**

- Each Peer Reviewer is to complete a Peer Review report using the electronic form.
- Provide a response to each of the questions. If you answer "yes" or "no" to any question, please provide a detailed explanation to support your response.
- The Peer Review report is an expert opinion on whether the standard of quality care has been met in the care rendered to a patient or to several patients, including but not limited to, specific aspects of the care and treatment rendered.
- The Peer Review report should be as detailed as necessary to provide the expert opinion requested, clearly written, specific to the issues, and complete.
- The Peer Review report should not include inflammatory or derogatory remarks.

PEER REVIEW FORM—INCIDENT CASE
MARYLAND BOARD OF PHYSICIANS

Maryland Department of Health & Mental Hygiene
4201 Patterson Avenue e Baltimore, Maryland 21215-0095

Telephone 410-764-4777

Toll Free 800-492-6836

Fax 410-358-2252

A. CASE BACKGROUND (To be completed by MBP Compliance Unit)

- 1.) Licensee Name:
2.) MBP Case Number:
3.) License Number:
4.) Type of Peer Review Requested: Select One
5.) Focus of Peer Review:

This case is being referred for review of the care rendered to this patient. The reviewer should comment on overall care provided to this patient. More specifically, each Peer Review report must:

- demonstrate a knowledge of the background of the complaint and of the medical treatment at issue;
• state what standard of quality care is required in this instance;
• state whether the care rendered by the physician did or did not meet the standard of quality care;
• state the bases for that opinion; and,

In addition, the Board has requested that the Peer Review report should address the following concerns:

B. PEER REVIEWER INFORMATION (To be completed by the Peer Reviewer)

- 6.) Physician Reviewer's Name:
7.) Physician Reviewer's License #:
8.) Physician Reviewer's ABMS/ AOA Certification:

C. PEER REVIEW REPORT (To be completed by the Peer Reviewer)

- 9.) Name of patient:
10.) List of material reviewed:
11.) Provide a detailed summary of this patient's medical history as it relates to the care at issue:
12.) Provide a detailed summary of the care provided to this patient by the physician in this case:
13.) What does the standard of quality care require in the treatment of this patient in this circumstance?
14.) a. Did the care provided to the patient meet the standard of quality care?

b. Provide the basis of your opinion:

- 15.) a. Was the documentation in the record adequate?

b. Provide the details to support your response:

- 16.) Please discuss any additional concerns in detail (complete if the Board requested a focus of review in Section A, item 5):

D. PEER REVIEWER'S STATEMENT (To be completed by the Peer Reviewer)

17.) Typed/ Printed Name of Peer Reviewer Signature Date

I have reviewed the records, as stated in this report, and am willing to testify regarding the care rendered by the Physician under review in this case. I declare under the penalties of perjury that I am not aware of any professional or personal relationship or other conflict of interest which exists which would prevent me from rendering an objective and impartial opinion in this case.

Peer Reviewer Initials

ATTACHMENT R2

**PEER REVIEW FORM—PRACTICE REVIEW**  
**MARYLAND BOARD OF PHYSICIANS**  
Maryland Department of Health & Mental Hygiene  
4201 Patterson Avenue e Baltimore, Maryland 21215-0095

Telephone 410-764-4777

Toll Free 800-492-6836

Fax 410-358-2252

**A. CASE BACKGROUND (To be completed by MBP Compliance Unit)**

- 1.) Licensee Name:
- 2.) MBP Case Number:
- 3.) License Number:
- 4.) Type of Peer Review Requested:    Select One
- 5.) Number of charts to be reviewed:
- 6.) Focus of Peer Review:

The Board has requested a Peer Review of the physician's practice and involves the review of six to ten randomly selected patient charts. In reviewing the materials for the standard of quality care rendered by the physician, please consider all aspects of the care rendered to each patient. More specifically, the Peer Review report **for each patient** must:

- demonstrate a knowledge of the background of the complaint and of the medical treatment at issue;
- state what standard of quality care is required in this instance;
- state whether the care rendered by the physician did or did not meet the standard of quality care;
- state the bases for that opinion; and

In addition, the Board has requested that the Peer Review report should address the following concerns:

**B. PEER REVIEWER INFORMATION (To be completed by the Peer Reviewer)**

- 7.) Physician Reviewer's Name:
- 8.) Physician Reviewer's License #:
- 9.) Physician Reviewer's ABMS/ AOA Certification:

**C. PEER REVIEW REPORT (To be completed by the Peer Reviewer)**

**CHART # 1**

- 10.) Name of patient:
- 11.) List of material reviewed:
  
- 12.) Provide a detailed summary of this patient's medical history as it relates to the care at issue:
- 13.) Provide a detailed summary of the care provided to this patient by the physician in this case:
- 14.) What does the standard of quality care require in the treatment of this patient in this circumstance?
- 15.) a. Did the care provided to the patient meet the standard of quality care?  
  
      b. Provide the basis of your opinion:
- 16.) a. Was the documentation in the record adequate?  
  
      b. Provide the details to support your response:
- 17.) Please discuss any additional concerns in detail (complete if the Board requested a focus of review in Section A, item 6):

\_\_\_\_\_  
Peer Reviewer's Initials

**C. PEER REVIEW REPORT (To be completed by the Peer Reviewer)**

**CHART # 2**

- 10.) Name of patient:
- 11.) List of material reviewed:  
0
- 12.) Provide a detailed summary of this patient's medical history as it relates to the care at issue:
- 13.) Provide a detailed summary of the care provided to this patient by the physician in this case:
- 14.) What does the standard of quality care require in the treatment of this patient in this circumstance?
- 15.) a. Did the care provided to the patient meet the standard of quality care?  
  
b. Provide the basis of your opinion:
- 16.) a. Was the documentation in the record adequate?  
  
b. Provide the details to support your response:
- 17.) Please discuss any additional concerns in detail (complete if the Board requested a focus of review in Section A, item 6):

**C. PEER REVIEW REPORT (To be completed by the Peer Reviewer)**

**CHART # 3**

- 10.) Name of patient:
- 11.) List of material reviewed:  
•
- 12.) Provide a detailed summary of this patient's medical history as it relates to the care at issue:
- 13.) Provide a detailed summary of the care provided to this patient by the physician in this case:
- 14.) What does the standard of quality care require in the treatment of this patient in this circumstance?
- 15.) a. Did the care provided to the patient meet the standard of quality care?  
  
b. Provide the basis of your opinion:
- 16.) a. Was the documentation in the record adequate?  
  
b. Provide the details to support your response:
- 17.) Please discuss any additional concerns in detail (complete if the Board requested a focus of review in Section A, item 6):

**D. PEER REVIEWER'S STATEMENT (To be completed by the Peer Reviewer)**

18.) \_\_\_\_\_  
Typed/ Printed Name of Peer Reviewer                      Signature                      Date

I have reviewed the records, as stated in this report, and am willing to testify regarding the care rendered by the Physician under review in this case. I declare under the penalties of perjury that I am not aware of any professional or personal relationship or other conflict of interest which exists which would prevent me from rendering an objective and impartial opinion in this case.

## ATTACHMENT S – ELEMENTS ON TRAINING PROGRAM

### Elements of a Training Program for Peer Reviewers

(The Board acknowledges that some of this material is derived from the Oregon Board of Medical Examiners "Handbook for BME Consultants" August 2001 though that publication forms no part of this list of essential training elements.)

#### I. Board Investigative Process.

Reviewers should be familiar with the investigative process of the Board. The Board offers a short tutorial to new physicians which outlines the process, includes a flowchart of the disciplinary process under the State Board of Physicians, and provides useful links. Reviewers may access this tutorial at <http://www.mbp.state.md.us> (New Physician Orientation. Log on a Guest.) The authorizing statute may be accessed at <http://mlis.state.md.us/cgi-win/web statutes.exe> (Health Occupations Article, §§14-401 thru 415); and regulations at <https://constmail.gov.state.md.us/comar/10/10.32.02.01.htm> (COMAR 10.32.02.01 through 10.32.02.10).

#### II. Role of the Peer Reviewer

The attached flow chart shows the process a complaint goes through from the time it is received by the Board of Physicians until it reaches final resolution. If the Board determines that a full investigation is warranted, the case is sent to the Peer Review Contractor and then assigned to Peer Reviewers under this Contract.

The case would then be assigned to a reviewer under this contract. The Peer Reviewer's expertise in the licensee's specialty (or the procedures in question in a case) provides the Board a basis on which to decide whether or not to charge and/or sanction a physician with failure to meet the standard of quality medical or surgical care. A written Peer Review report, and, in some cases, expert witness testimony by the Peer Reviewer, provide the Board with an expert opinion in this case.

The Peer Reviewer is asked his/her opinion on whether the licensee's action or lack of action was or was not clearly below the standard of quality care (regardless of whether or not this care can be shown to have resulted in actual harm to the patient). Peer Reviewers do not make a final decision on whether a violation of the Medical Practice Act has occurred. The Board of Physicians has the authority to charge and/or sanction a physician under the Medical Practice Act. The Peer Review report assists them to determine if a violation has in fact occurred.

The contractor will ask the reviewers about conflicts of interest. Some of the more common conflicts of interest include personal or professional relationships with the licensee under review or the patient or complainant (e.g., reviewing the medical care provided by or to friends, family members, economic partners, or competitors).

## VI. What is an Expert Witness?

The rules of evidence generally provide that if scientific, technical or other specialized knowledge will assist the trier of fact or a deliberative body (such as the Board of Physicians) to understand the evidence or to determine a fact in an issue, then a witness qualified as an expert by knowledge, skill, experience, and training may testify thereto in the form of an opinion or otherwise. In the event that a case results in charges against a licensee, the Peer Reviewer may become an expert witness. When a Peer Reviewer accepts a case for review, the reviewer may also be required to appear and testify during a hearing on the case.

### a. Hearings: What to Expect

If the Board of Physicians votes to charge a licensee with a violation of the Medical Practice Act and the licensee contests the charge, a hearing at the Office of Administrative Hearings is held. Hearings occur only rarely. Typically, the need for such a hearing and the need for an expert witness's testimony will be known several months in advance. The administrative prosecutor in the case will assist a Peer Reviewer in preparing for a hearing. A Peer Reviewer will not usually be required to travel in order to engage in this preparation.

During the direct examination, the administrative prosecutor will question the reviewer first. The initial questions will be about education, training and experience. These questions are designed to "qualify" the reviewer--that is, establish the qualifications as an expert for the official record.

After a Peer Reviewer has been qualified as an expert, the Board attorney will question the Peer Reviewer about the medical records reviewed. The Peer Reviewer will be given a copy of the medical records to refer to for specific page numbers, dates, lab reports and quotes. The Peer Reviewer is not expected to recite every detail in the medical record from memory. The Peer Reviewer may ask to see the medical records. Any document reviewed, read or referred to while the reviewer is on the witness stand is legally available to both the Board attorney and to the defense attorney.

### III. Report Writing (The Opinion)

The Peer Reviewer's opinion will be initially embodied in a written document, using the report format specified. It should be as brief or as lengthy as necessary to be clear, specific, and complete. The report should avoid abbreviations and use plain English as much as possible, since many non-medical people will read the report.

The report should be specific in describing the factors which made the reviewer believe that the licensee's action or inaction resulted in (or failed to result in) quality care. If it is the reviewer's opinion that the licensee did in fact provide competent and quality care, the reviewer should state this plainly and explain the reasons for this opinion.

The Peer Review report is not a public document. Names of the patients whose care is subject to a Peer Review may if necessary be used without disguising them with initials or other means of protecting the identity of the patient. Should the case record be the subject of a court appeal at any point, the names of the patients in the Peer Review report will be redacted, or the record will be sealed or both. Avoid inflammatory or derogatory remarks. Peer Reviewers should be aware that Board members and staff, the administrative prosecutor, the licensee, the licensee's attorney, and/or an administrative law judge may read the report, should the case go to adjudication.

Reviewers need to consider when the events under review took place and when particular advances in the profession became part of the standard of quality care. For example, if pulse oximeters or other technology were not widely available at the time of an incident in which their use is now standard, make a note of this fact. The care should be judged against the standard at the time the events occurred.

### IV. Confidentiality

All health care practitioners have a duty in law to maintain confidentiality of their patients. Confidentiality is equally important when dealing with the work of the Board of Physicians, since all records of the Board, including the medical records reviewed and the Peer Review report are made confidential by law. All documents that the reviewers receive or discussions they have with authorized individuals (Board staff, another reviewer on the case, contractor, or administrative prosecutor) are confidential. Reviewers should not tell anyone that they are reviewing a particular case. Refer questions to the Board of Physicians through the Department's Contract Monitor.

### V. Conflict of Interest.

If the reviewer believes that he or she has a conflict of interest in reviewing a particular licensee, the reviewer should notify the Peer Review contractor as soon as possible. Reviewers should feel comfortable and unbiased about the work they do so that they can provide a completely objective opinion and avoid any real or apparent conflict of interest.

During his/her testimony, the Peer Reviewer should try to avoid using medical jargon whenever possible. If the Peer Reviewer does use jargon or difficult scientific terms, the Peer Reviewer should try to define or explain them in lay terms. This testimony must be understood by:

- I. Attorneys (who are probably unfamiliar with medical terminology).
2. Board members, many of whom are non-physicians. Many of the physicians may practice in an unrelated sub-specialty.
3. In the event of an appeal, by a judge who may review a written transcript of the Peer Reviewer's testimony.

If it would be easier for the Peer Reviewer to explain certain concepts by drawing pictures or diagrams or referring to photographs, the Peer Reviewer should tell the Board attorney in advance. Arrangements can be made to have a flip chart, lighted view boxes for displaying X-rays, a slide projector, or other helpful materials available in the hearing room.

**ATTACHMENT T – MARYLAND BOARD OF PHYSICIANS COMPLAINT PROCESS**

